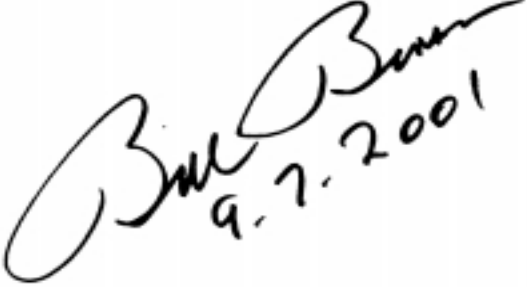
THE LAW

THAT NEVER WAS

VOL. II


9.7.2001

— The fraud of the 16th Amendment and personal Income Tax —

by

Bill Benson

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Published by
Constitutional Research Assoc.
Box 550
South Holland, IL 60473

Printed in the United States of America
Fourth Printing
April 2001

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"Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy. To declare that in the administration of the criminal law the end justifies the means . . . would bring terrible retribution. Against the pernicious doctrine this Court should resolutely set its face."

Justice Brandeis in *Olmstead v. United States*, 277 U.S. 438 (1928).

This volume is dedicated to the victims of the fraud.

To those who have lost their homes.

To those who have been imprisoned.

To those who are imprisoned.

To those who have lost their lives.

To those who have been disgraced.

To those who bear emotional scars.

To those who have been made destitute.

To those who have been driven to the brink.

To those who did not come back from the brink.

We mourn for you, we salute you, we pray for you.

We dedicate ourselves to an honest government in our future.

It wouldn't be appropriate if I did not mention George Sitka again. Without the generous contributions from George this book, as Volume I, might have taken many more years to research and to produce, getting the truth of the Sixteenth Amendment fraud into the hands of the American people, as well as into the hands of the Congressmen, Senators, U. S. Attorney General, U. S. Attorneys and their associates, the I.R.S. Commissioner, I.R.S. Special Revenue Agents and I.R.S. Revenue Agents.

George has been a successful businessman. He has a rare gift of making good investments, but these books will turn out to be George's best investment of all because they are an investment in the future of his family and his country. Because of you, George, we hope to see the day when the American people no longer have to hide their resources by investing them in tiny offshore island nations with more banks than people.

I personally thank you and I believe that all of the American people will thank you also when the evils that the Sixteenth Amendment fraud has caused have finally been rectified. Then, this country can do nothing but prosper and grow from your investment, just as your other investments have grown.

My sincerest thanks, George, for taking a risk by unselfishly investing with no hope of an actual return except that of seeing your country free again.

Sincerely,
William J. Benson (Bill)

The Law That Never Was, Vol. II, was in some ways more difficult to put in print than Volume I. There were, of course, the events which have occurred as a result of Volume I, including the trials, the seminars, the radio and television talk shows and all the attendant administrative and informational problems in dealing with a lot of different people all over the country. Those were not really the difficulties. I have faced delays of all kinds in the actual writing of Volume II and in the process of getting the manuscript into the hands of the printer. I apologize for the delays.

Although it is not necessary to have read Volume I to understand Volume II, it certainly would be most beneficial. Volume I was mostly a narrative which set forth the documentary history of the Sixteenth Amendment ratification process. Volume II is an analysis of the events of the past year, an analysis of the positions taken by the Department of Justice and the federal courts relative to the Sixteenth Amendment issue and a historical perspective of events which we feel were and are pertinent to that issue. While Volume I was based strictly upon the evidence which was gathered by myself, Volume II has been based upon reactions to that evidence.

We do not know whether the federal and State officials who have received copies of Volume I believed that there would be a Volume II. We suspect that they hoped there would not be. We do not know whether they believe that there will be a Volume III. Rest assured we have enough on all of those people for several volumes.

We would like to return to honest governmental administration. After a year of seeing the reactions, we have yet to see a single federal or State official who really wants the same thing. The word "comfortable" appropriately describes the prevailing attitude. Rock the boat and a whole lot of nominally governmental workers, including judges, prosecutors and revenue agents, might have to find new employment in a world less prone to view an ex-governmental official with much sympathy. Therefore, these people want, at a minimum, to keep the status quo. The more vicious want to put more screws into the American people. Absolutely none are interested in abolishing the system which President Reagan has called "utterly unjust" and "un-American."

The income tax system in this country has had a profoundly evil influence on our society. It has become a veritable monster vacuum cleaner sucking up valuable resources of time and money. An enormous amount of man-years of brain power is pulled away from productive endeavors every day in tending to the bloated, gluttonous I.R.S. bureaucracy and its sister bureaucracies in the States. The mental and physical resources of an army of accountants, agents, attorneys, auditors, bookkeepers, clerks, computer operators, computer programmers, executives, management per-

that he would sit idly by and do nothing. Many pastors and preachers feigned support but quickly faded into the lukewarm background, never more to be heard from. May God help them.

Finally, there is the case of the federal district court judge, James B. Moran, who, thinking to inject a little Christian morality into his pronouncement at the sentencing of a so-called tax protester named Lawrence Dube, referred to the return of Joseph and Mary to Bethlehem as a pre-condition to the Savior's birth. According to Moran, "the reason that Jesus was born in Bethlehem was that Joseph and Mary had gone there to take part in the **census** so that they could be taxed, and that that's what they were told to do, and that's what they did." If I were Judge Moran, I would quickly want to un-sentence Mr. Dube and every other American that I had wrongfully sent to prison or had allowed to be taxed without their having taken "part in the **census** so that they **could** be taxed." That is what the Constitution has told Judge Moran to do, and that's not what he did. I'm not so sure that God will help James B. Moran. God "has mercy on whom He desires, and He hardens whom He desires"; Romans 9:18 (NASV). The evidence shows that the hearts of many judges have turned to stone.

How must we react, those of us who believe that this country can still be turned from the constitutional disaster of the income tax? With remarkable unity, with remarkable faith, with remarkable courage; more courage than ever before. Why? Because now more than ever, we have good reason to heed Sir John Harrington's short verse: "Treason doth never prosper, what's the reason? For if it prosper, none dare call it treason."

As this book was being written, the first year of the public revelation of the Sixteenth Amendment fraud was passing into legal history. The cases in which the issue has been fought will become landmarks. The question is, to what pathway do they point? One leads to greater tyranny, the road to national ruin; the other is a return route to the Declaration of Independence. Although it may be too early to tell, I firmly believe that we are headed up the latter route. And, it truly must be that we, that is, all of us, shall have to go up together, or else we shall all fail.

William J. Benson

The Law That Never Was, Vol. I, represents a breakthrough in income tax litigation and criminal prosecution. It is "newly discovered evidence." The vitiating adjustments which morally must follow the discovery of a fraud are not bound by any artificial barriers, like statutes of limitations. The reason for that is simple. One can never tell when evidence of a fraud, an act which is naturally intended to be hidden, will be discovered and brought forward into the light. Such evidence may be discovered shortly after the commission of the fraud, or it may take years. Passage of time is immaterial because justice demands that such wrongs be righted no matter how late the hour. When newly discovered evidence in the case of a fraud is brought out, it is the duty of society, specifically the courts, to return the victim to his original state as much as is possible, to compensate that victim for his suffering, and to punish those responsible for the fraud and any who participated in furtherance of the fraud, whether intentionally or unintentionally through negligence.

It is that same morally irresistible concept which has dictated that Nazi war criminals be hunted down and caught no matter how late the hour. It is that concept which has resulted in the initial reversal in the infamous "relocation" trials of Japanese-Americans. The opinions handed down by the United States Supreme Court in those cases, *Hirabayashi v. U.S.*, 320 U.S. 84 (1943) and its companion case, *Yasui v. U.S.*, 320 U.S. 115 (1943), were used to justify the wholly unconstitutional and unwarranted incarceration of American citizens of Japanese descent in February of 1942, without benefit of trial or of any of the trappings of due process. The flimsy basis of these opinions had been pious assertions of "military necessity," but **newly discovered evidence**, retrieved from federal archives, by a dedicated team of researchers (as Bill Benson retrieved the Sixteenth Amendment documentation from the archives in all the contiguous States and the National Archives) showed that the Assistant Secretary of War, John J. McCloy, conspired to present deceitful and fraudulently incomplete evidence to the court. Evidence which showed that there had been no acts of disloyalty amongst Japanese-Americans had been altered, suppressed and destroyed. **Despite the passage of forty years**, federal district court judge, Marilyn Patel, in *Korematsu v. U.S.*, 584 FSupp. 1406 (N.D. Cal, 1984), granted a petition for a writ of error coram nobis, finding that officials of the United States had, in effect, defrauded the petitioner, Korematsu, by preventing exculpatory evidence from going before the Supreme Court. *Korematsu*, at 1417. In so doing, Judge Patel reversed the Supreme Court for a mistake of fact.

In what has become the frantic attempt by the Attorney General's Office through the U.S. Attorneys and by the federal judges to suppress the information in *The Law*

matsu case, namely, that it's too late, that justice can be foreclosed by delay in learning of a fraud. The second is the incredible and indefensible argument that an issue of fraud cannot be heard by the courts simply because the fraud was committed in the process of ratifying an amendment to the Supreme Law of the land and, therefore, was strictly political and not under the jurisdiction of the courts. The Sixteenth Amendment cases which have been tried in courts, mostly federal, have featured this two-pronged attack of "lateness-of- the-hour" and "nonjusticiability."

Another argument has more recently been employed to combat the Sixteenth Amendment. That argument is based upon *Brushaber v. Union Pacific Railroad Company*, 240 U.S. 1 (1916), and asserts that the personal income tax upon wages is an excise tax. A classic example of what goes around, comes around. This is basically the same argument that so-called tax protesters have been utilizing for many years. The response of the judiciary and the U.S. Attorneys when so-called tax protesters have brought the *Brushaber* excise tax argument has been the legal-writers' equivalent to the Bronx cheer, that is, "frivolous and without merit." Now, the U.S. Attorneys are trying to stand on what has been one of our favorite spots. It's getting a little crowded. And, there might not be enough room for the judges to get in here.

We will analyze each of these arguments, in addition to the other pertinent issues involved and the cases currently being heard in the federal court.

Whenever a battle is fought, the position of your opponent is crucial to the outcome. This is even more crucial when the battle is fought with words. In a battle fought with bullets, there isn't much question when you've definitely locked onto your opponent's position; pull the trigger when he's in your sights and that will about do it. In a battle fought with words, your opponent can shift his relative position by skillfully redefining either his position or your position. This is a tactic of pure deception. Change the meaning of even one word and the entire meaning of either your position or your opponent's position can be changed. Change the meaning of even one word and you can put a man in prison or keep him out.

> For the ruthless will come to an end, and the scorner will be finished, Indeed all who are intent on doing evil will be cut off;
> Who cause a person to be indicted by a word, and ensnare him who adjudicates at the gate, and defraud the one in the right with meaningless arguments. Isaiah 29:20, 21 (New American Standard Version)

The issue of the fraudulent ratification of the Sixteenth Amendment has become a battle fought with words. As they have done so often in their defense of the corrupt and abusive federal income tax system, the U.S. Attorneys and federal judges in this country have joined this particular battle by attempting to subtly change our position by tinkering with our words. The most common example of this ploy is the simple alteration of one word in our charge against the Sixteenth Amendment. These lawyers have deceptively implied that we hold that the Sixteenth Amendment was only "improperly" ratified, or "invalidly" ratified, rather than "fraudulently" ratified. There is, of course, an enormous difference between "improper" or "invalid" and "fraudulent." Something that is improperly done may merely be flawed, but not grievously and intentionally. Invalidity may involve mere mistake, or accident. Neither word conveys criminal intent, or **mens rea**, a malicious, knowing commission of a wrongful act. The word, fraudulent, does convey such criminal intent. Neither "improper" nor "invalid" is sufficient to denote the complete impropriety or the complete invalidity that the word "fraudulent" denotes. The U.S. Attorneys have meticulously avoided addressing the fraud in court.

Obviously, if the various U.S. Attorneys can slyly slide either of these two tepid, indefinite words into our position in place of the one hot, definite word, they can effectively destroy our true position. The words improper, or invalid, can allow the continued existence of acts performed in the manner they set forth. The word fraudulently does not allow for the continued existence of acts so performed. 37 Am.Jur.2d 8, states:

> ity of everything into which it enters, and that it vitiates the most solemn contracts, documents, and even judgments. Fraud, as it is sometimes said, vitiates every act, which statement embodies a thoroughly sound doctrine when it is properly applied to the subject matter in controversy and to the parties thereto and in a proper forum. (emphasis added)

In *The Law That Never Was*, Vol. I, we set out in graphic detail the content of the documents first partially retrieved by the Montana Historians, which were initially revealed in public by "Red" Beckman in 1983, and which Bill Benson then patiently and painstakingly retrieved as a complete and total body of evidence from the archives and other documentary depositories in the 48 contiguous States and the National Archives. That public record, hidden for over 70 years by the triple obstacles of geography, technology (no copiers) and cost, irrefutably shows that not one, but several, egregious frauds were committed in the purported ratification of the Sixteenth Amendment. That amendment was, thus, not ratified at all and any appearance of ratification which may exist has no foundation because of the frauds committed by parties involved in the ratification process.

The cunning attempts to substitute the weak, impotent words "improper" or "invalid" in our assertions of fraud are themselves dishonest and fraudulent. U.S. Attorneys, experienced wordsmiths all, understand very well exactly what they are trying to accomplish. They have knowingly and willfully indicted many innocent and helpless victims for income tax crimes with a single word. That single word has most frequently been "willfully".

A brand, new tactic which the U.S. Attorneys and Attorney General seem to be using is that of saying the Sixteenth Amendment was of virtually no effect relative to the taxation of the wages of the ordinary worker. In the case of *United States v. George M. House and Marion M. House*, 85-1611 and 85-1612, on appeal in the United States Court of Appeals for the Sixth Circuit, Assistant Attorney General Glenn L. Archer, Jr., posited a unique and incredible theory of Constitutional law. In the Brief of Appellee, at 14, Archer stated:

> Even without regard to the Sixteenth Amendment, Congress would be empowered to impose a tax on income received as compensation for services, without apportionment, pursuant to the broad grant of taxing power under Article I, Section 8, of the Constitution. That taxing power embraces every conceivable power of taxation, including the power to lay and collect income taxes. *Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1, 12-13 (1916). The Sixteenth Amendment merely eliminates the requirement that, to the extent an income tax constitutes a direct tax, it be apportioned among the states.

First, Archer says that Congress could tax compensation received for services without apportionment and then he says, in the last sentence above, that the "Sixteenth Amendment **merely eliminates the requirement** that, to the extent an income tax constitutes a direct tax, it be apportioned among the states." Utterly fantastic. According to this double-talk, Congress is not required, but then again is required to apportion taxes laid upon incomes, and, therefore, the Sixteenth Amendment did nothing, but, actually did do something relative to the apportionment requirement. Let's clear up

The Apportionment Requirement

The courts have repeatedly justified the current income tax system using the Sixteenth Amendment. And yet, in the case of *Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1 (1916), the United States Supreme Court said that the Sixteenth Amendment conferred no new taxing power, i.e., that the federal government already had the power to lay the kind of direct tax contemplated by that amendment, the income tax. In order to understand how these two statements are compatible, it is necessary to understand the simple basis for the manner in which the framers of the Constitution set up restrictions for the laying of taxes in this nation. These restrictions were not complicated either in execution or concept. Indirect taxes were to be laid under the rule of uniformity and direct taxes were to be laid under the rule of apportionment. Unfortunately, these simple constitutional directives have become thoroughly entangled in a steady, stealthy web of confusion which has bound up their force and meaning. We need to unravel this confusion.

* * *

The normal business of government was to be funded by the revenues from "indirect taxes"—namely duties, imposts and excises. These are, of course, just like the duties, imposts and excises collected today. Before most imported goods can be brought into this country, a small charge in the form of a duty, or impost, ordinarily must be paid to the customs collector upon that product. Excises are levied upon luxury items and privileges. Provision for these duties, imposts and excises and the rule for their uniform levy was made under Article I, Section 8, Paragraph 1 of the Constitution:

> The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States . . .

Taxes are distinct from duties, imposts and excises; see *Pollock v. Farmers' Loan & Trust Co.*, 158 U.S. 601, 624-25 (1895). And, the courts have defined excises in very restricted, explicit terms, leaving their construction to that which was common at the time the Constitution was adopted. In *Davis v. Boston*, 89 F.2d 368, 373-76 (CCA1, 1937), the Court stated that:

> At the time of the adoption of the Constitution the term "excise tax"was used only in connection with a tax on goods, merchandise, and commodities.
>
> * * *
>
> As defined in Bouvier's Law Dictionary, Rawle's Third Revision, p. 551, commodity is a broader term than merchandise and "may mean almost any description of articles called movable or personal estate. **Labor is not a commodity.**"
>
> In the discussions in the several state conventions, both as to the adoption of the Federal Constitution and with reference to the adoption of the respective state constitutions, it seems apparent that the understanding of the term "excise tax" was a tax laid upon articles of use or consumption, not

sense as including goods, wares, merchandise, produce of the land and manufacture.

* * *

The court in Flint v. Stone Tracy Co., 220 U.S. 107, 151, 31 S.Ct. 342, 349, 55 L.Ed. 389, Ann.Cas.1912B, 1312, adopted the definition of excise taxes found in Cooley on Constitutional Law (7th Ed.) p. 680:

"Excises are taxes, laid upon the manufacture, sale, or consumption of commodities within the country, upon licenses to pursue certain occupations, and upon corporate privileges," which appears to cover the entire ground.

* * *

But nowhere do we find that an excise tax has ever been imposed in this country on the natural right to employ labor in manufacturing, or in any trade or calling for profit. (emphasis added)

The "licenses to pursue certain occupations" were more fully explained in *Davis v. Edison Electric Illuminating Co. of Boston*, 89 F. 2d 393, 395 (CCA1 1937):

Certain particular vocations in which the public may have an interest, such as attorneys, innkeepers, or auctioneers, may be subject to excise taxes, as was said in Thomas v. United States, 192 U.S. 363. It has never been held, however, either by the Supreme Court of the United States, or the Supreme Court of any state, so far as we are advised, that Congress had the power to tax the common right to employ labor. **It is like taxing a person's right to work.** (emphasis added)

Davis v. Edison makes it clear that no one has a right to tax the right to work. This precise and inviolable limitation on excises exists because, otherwise, a person's very existence could be taxed. The other limitations of the excise, mentioned in *Davis v. Boston*—that such taxes can only be laid upon the manufacture, sale or consumption of commodities, or upon privileges, or upon luxuries—were a natural prohibition against the growth of the federal budget. The administrators of government were expected to live within a fairly narrow range of activity and an equally narrow budget. Furthermore, under the rule of uniformity, they were commanded to provide for their budget in a fair and even-handed manner.

Another method of taxation, however, was provided to cover those situations in which an emergency might require a bit more revenue. Wars, after all, did occur now and then. However, the framers of the Constitution wanted to restrict this particular power to tax in a very special fashion. The Constitutional restrictions on direct taxation, prior to the fraudulently asserted ratification of the Sixteenth Amendment, are set forth in Article I, Section 9, Paragraph 4, thusly:

No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken.

This meant that direct taxes, like the income tax, had to be proportionately laid upon the population according to the census commanded by the Constitution. The percentage of the whole population of the country, measured by the census, which lived within any particular State would determine the exact percentage for which that State's taxpayers would be responsible. In other words, if the population of a particu-

States, then, 2% of any direct tax passed by Congress would have to be collected from the eligible taxpayers of that particular State. This is precisely how the very first use of this power was administered during the Civil War; see *U.S. Statutes*, 37th Cong., 1st Session, Ch. 45, 1861, at 294-95. President Lincoln had called for Congress to raise funds for that most debilitating of wars, thus illustrating the nature of direct taxes—as emergency fund-raisers—and they were apportioned by Congress without undue difficulty.

The United States Supreme Court explained the intent of the framers of the Constitution relative to these two forms of taxation, direct and indirect, in *Pollock*, 158 U.S., at 621:

> The founders anticipated that the expenditures of the States, their counties, cities, and towns, would chiefly be met by direct taxation on accumulated property, while they expected those of the Federal government would be for the most part met by indirect taxes. And in order that the power of direct taxation by the general government should not be exercised, **except on necessity**, and, when the necessity arose, should be so exercised as to leave the States at liberty to discharge their respective obligations, and should not be so exercised, unfairly and discriminatingly, as to particular States or otherwise, by a mere majority vote, possibly of those whose constituents were intentionally not subjected to any part of the burden, the qualified grant was made. (emphasis added)

The "qualified grant," of course, refers to the grant of power to the federal administration to levy a direct tax only under the rule of apportionment. That rule was intended to prevent the unbridled levying of direct taxes and, so, to prevent federal intrusion upon the ability of the States to levy such taxes.

The debates held in the legislatures all over the country on the issue of the Sixteenth Amendment ratification (see *The Law That Never Was*, Vol. I, at 51, 227, 273, & 291 and in the Appendix of this Volume) confirm that the taxes contemplated by direct levy on property were always intended to be restricted to emergency conditions, principally wartime, and only when necessary for national survival. They were never intended to become a permanent fixture by which public servants would become permanently attached to our wallets.

Taxation was a bad word at the adoption of the Constitution, as it is now. To prohibit the insufferable conditions of taxation which precipitated the American War for Independence, the provision for direct taxes was carefully and appropriately constructed so as to make those directly responsible for imposing the taxes, the members of the House of Representatives, the most answerable to the masters of the new nation, specifically, the sovereign citizens who elect those Representatives. All revenue bills were to originate in the House of Representatives (*United States Constitution*, Article I, Section 7), members of which were to be apportioned according to the census just like the direct taxes. The "census or enumeration hereinbefore directed to be taken" in order to determine the proportion of any direct tax to be levied upon the people of a particular state is explained in Article I, Section 2:

> Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual

years, in such manner as they shall by law direct.

This clause in the Constitution linked taxation directly to representation in answer to the original American tax protesters' slogan, "No taxation without representation." This is emphasized in the rehearing of *Pollock*, 158 U.S. 601, 637 (1895), wherein the Chief Justice rendering the opinion held that a direct tax was unconstitutional and void if it was "not apportioned according to **representation**."

The two-year term of members of the House was intended to assure the voting masters a fairly quick review of the job that their elected Representative, their servant, had done for them in that body. There were even provisions made to recall an unusually wicked servant from his office at any time. When the Constitution was written, the concern over how heavy a tax burden had been placed upon the citizens was of stingingly recent vintage and that concern weighed heavily upon the voters' judgment of their elected officials' devotion to duty. In such a manner, the Constitution provided for a limitation on the length of time any direct (and assumedly temporary) tax could be levied, since taxes thought by the citizenry to be overly burdensome could be protested merely by removing that Representative who didn't want to stop levying that tax. The urgent necessity for ensuring that this tax-limiting power remain with the sovereign citizen is aptly stated in the original hearing of *Pollock v. Farmers' Loan & Trust Company*, 157 U.S. 429, 556 (1894):

> "[T]he people must, in effect, themselves, mediately or immediately, possess the power of granting their own money, or **no shadow of liberty could subsist**." The principle was that the consent of those who were expected to pay [the tax] was **essential** to the validity of the tax. (emphasis added)

In other words, only the consent of the taxpayers can validate a direct tax.

The Constitutional provision of apportionment according to representation, as a device for keeping the body of Congress responsible for revenue-raising, namely the House, as close to the voters as possible, was considered a great barrier against tyranny by *Pollock*, 157 U.S., at 583:

> If, by calling a tax indirect when it is essentially direct, the rule of protection could be frittered away, one of the great landmarks defining the boundary between the Nation and the States of which it is composed, would have disappeared, and with it one of **the bulwarks of private rights and private property**. (emphasis added)

This is exactly what Assistant Attorney General Archer now proposes to do—call "a tax indirect when it is essentially direct." The ruse employed by Archer is aimed directly at the protection afforded by the apportionment bulwark. Archer has sought to distort the solid lines of demarcation classifying direct taxes and let them bleed into the category of indirect taxes.

Recently, the United States Court of Appeals for the Sixth Circuit, in *House* case, has attempted to rewrite history on excises by agreeing with Archer in saying that the income tax can be a nonapportioned, indirect tax. In a Brookings Institution report entitled, *The Role of Direct and Indirect Taxes in the Federal Revenue System*, (Princeton University Press, Princeton, 1964), it was stated, at 3, that:

> There are two principal categories of indirect taxes: excises, imposed

except those specifically exempted.

Another Brookings Institution report, authored by Richard Goode, entitled *The Individual Income Tax*, (The Brookings Institution, Washington, D.C., 1976), said, at 1, that:

> On February 25, 1913, the secretary of state certified the ratification of the Sixteenth Amendment to the Constitution, giving Congress "power to lay and collect taxes on incomes, from whatever source derived." This amendment, the first to be adopted in forty-three years, overturned a Supreme Court decision that had blocked **an individual income tax** for almost two decades, and opened a new chapter in the fiscal history of the United States. (emphasis added)

Goode continued by defining excises and differentiating them from direct taxes on income, at 33 & 59:

> Excise taxes, sales taxes, and other indirect taxes still have an important role in the American federal-state- local revenue system as well as in other countries. Proposals are made from time to time for the adoption of a federal sales tax in the United States, most often in recent years in the form of a value-added tax. **Indirect taxes, however, cannot be considered close substitutes for well- administered direct taxes on income** or consumption since the former are ordinarily less broad in coverage, less easily adaptable to the individual circumstances of taxpayers, and usually lack progressivity. (emphasis added)
>
> * * *
>
> Indirect taxes are collected from producers or sellers in the expectation that they will be passed on to consumers as a separate charge or as an unidentified part of the price.

The Sixth Circuit's contention is, quite obviously, frivolous and meritless.

Article I, Section 2 also provided a requirement that if any particular "emergency" for which a direct tax was levied by Congress just happened to go on for longer than originally expected, a review would be necessary, at least every ten years following each census, which would, again, make each and every Representative responsible for returning to his constituents, his masters, to explain why it was that we, as a nation, had been in the dire straits of "emergency" for so long. It would be quite a cause for uproar if an emergency for which a direct tax had been laid upon the people no longer existed and yet the tax continued to be legislated and then enforced. The fraudulent obliteration of the rule of apportionment did away with this mandate for tax review by disconnecting the census from the direct taxing power.

So, as the *Brushaber* Court said, it is true that the federal government always possessed the power to lay direct taxes upon incomes; however, it did not have the power to lay such taxes indiscriminately because the constraints of the Constitution required the Congress, specifically the House (wherein all bills for the raising of revenue were required to originate), to continually ask the approval of the American people to do so and periodically commanded a review of the circumstances surrounding that request. The illusory power to lay direct taxes on incomes indiscriminately does arise from the equally illusory Sixteenth Amendment. According to *Evans v. Gore*, 253 U.S.

> [T]he purpose of the Amendment was to eliminate all occasion for such an apportionment because of the source from which the income came,—a change in no wise affecting the power to tax but only the mode of exercising it.

As explained in *Pollock*, this "mode of exercising" the direct taxing power by apportionment was (and still is) "one of the bulwarks of private rights and private property." When Assistant Attorney General Archer stated that "[t]he Sixteenth Amendment **merely** eliminates the requirement that [an income tax] be apportioned among the states," he was attempting to denigrate the concept of this bulwark of private rights and private property in further evidence of his total commitment to aiding and abetting the fraud originally committed by Philander Knox and company from 1909 to 1913.

* * *

The failure to follow the rule of apportionment has brought about a situation which that "bulwark" would have prevented. Because income taxes are not properly apportioned, as they must be, the vital link between Congressional representation and those taxes has been severed. The result has been a malapportionment of representation generally. Very little diligent effort has gone into reapportionment since 1913. But the patterns of population growth and distribution have continued to change, so rural areas which have had net population losses have become overrepresented and urban areas which have had net population gains have become under-represented.

Even before the Constitution was adopted, the principle of apportionment was closely tied to taxation in the individual States; see Robert B. McKay, *Reapportionment* (The Twentieth Century Fund, New York, 1965), at 17-18. There were even States (Massachusetts and New Hampshire) which apportioned according to the "public taxes paid" by each voting district, instead of apportioning by population; see McKay, at 18. It was recognized that taxation and fairness in representation were inextricably bound together. Without fair and equal representation, the consent to be taxed, or governed at all, could not exist; see McKay, at 20-21 (citing Robert McCloskey, *The Reapportionment Case*, 76 Harv. L. Rev. 54, 71 (1962)):

> [I]t is beyond doubt that the framers acknowledged popular consent as the indispensable basis for setting up that process of government in the first place. Though the government might take various forms and possess various powers, those characteristics were *derived* from the consent of the governed. If this central principle, so plain in the Declaration, was not expressed in the explicit language of the Constitution, it is because after 1776 it was taken for granted. Its claim to be a fundamental principle of the Constitution is about as solid as any claim could well be. (emphasis in original)

The representational aspect of our fundamental law, the Constitution, is the fundamental provision for our consent to be governed by chosen servants. The constitutional bond created between direct representation (by popular vote) and direct taxes was the Founding Fathers' governmental statement of how closely related the consent to be taxed is to the consent to be governed. At the time of the Declaration of Independence, they weren't just closely related; they were exactly the same thing.

fears of the newly independent Americans that majority rule was tyranny. The danger that the majority might try to coerce the minority. The inclusion of a guarantee of republican government, rather than democratic, in the Constitution is an indication of how strongly those fears were felt. The electoral college, the election of Senators by State Legislatures (changed to a popular vote by the Seventeenth Amendment) and the appointment of federal judges were all meant to be protections against tyranny by the majority, as was the guarantee to the States and to the people of their continued sovereignty. In fact, the States were intended to be at least as powerful as the federal administration and, in the beginning, were more powerful and influential. The primary needs of citizens were met by their local public servants at the State level, not by a burgeoning, bureaucratic, federal octopus with far more tentacles than constitutionally permitted.

The major portion of that fear of tyranny was fear of unjust taxation. However, when apportionment gets out of correct alignment, the possibility of unjust and unequal treatment of the citizenry becomes a likelihood. Malapportionment has become the rule rather than the exception throughout the United States principally because it has made no difference to the levying of taxes, which would otherwise be an overriding universal pocketbook concern to nearly every voter. Since people do not have an interest in how apportionment is administered for the sake of their pocketbooks, they have very little interest in how apportionment is administered at all.

Legislators, of course, enjoy malapportionment either way. Those representatives who have a relatively small constituency do not have to spend nearly the amount of campaign funds as those in more populous districts because they don't have to convince as many voters to vote for them. Those representatives who have an oversized constituency enjoy a much greater return from federal patronage and grants. In either case, malapportionment creates a temptation to corrupt the government. And, if legislators are corrupted, somebody must be suffering and that somebody is, of course, the voters. McKay, at 67, says:

> If any one fact emerges starkly from the tangled efforts at apportionment reform, it is that the disadvantaged voters, by the very fact of their partial disenfranchisement, are disabled from any political remedy. It makes no difference whether there is a theoretically available initiative, a periodic constitutional convention, or other imagined remedy. The demonstrated fact is that, where the judicial remedy is not available, individual voters, or even groups of voters, are powerless.

Thus, the disconnection of apportionment from direct, or income taxation has caused an enormous dislocation in rights of all kinds and in the just expectation of the people that their government will be administered fairly and equally. The result of this dislocation is that the American people have been "disabled from any political remedy" for the ills which apportionment was intended to prevent. Have you ever felt that relief from political blundering and malfeasance was virtually impossible to obtain? The remedy is much simpler than you have been led to believe.

Because the Sixteenth Amendment actually does not exist in law because of the fraud, then the current mode of exercising the power to tax income must, once again, come under the doctrine of *Pollock* and under the absolute Constitutional necessity for apportioning such taxes according to representation. The return to the rule of

Direct Taxation v. Indirect Taxation

Let's examine the landmark income tax law decision, *Pollock v. Farmers' Loan & Trust Company*, 157 U.S. 429 (1894), reh. 158 U.S. 601 (1895). The issue before the Court was stated in 157 U.S., at 580:

> [I]f, as the Constitution now reads, no unapportioned tax can be imposed upon real estate, can Congress without apportionment nevertheless impose taxes upon said real estate under the **guise** of an annual tax upon its rents or income? (emphasis added)

In other words, the Court was to decide whether a tax on income from real property was a **direct** tax upon the income-producing property itself and one which required apportionment. In its decision, the Court held that this was indeed the case, irrespective of any attempt on the part of Congress to disguise a tax upon income-producing property as an annual tax only upon that property's rents or income. The ultimate consequence of such a "guise," according to *Pollock*, was to tax the property which produced the income by taxing its income.

So, what is a **direct** tax anyway? The *Pollock* Court gave the definition, 157 U.S., at 558:

> Ordinarily, all taxes paid primarily by persons who can shift the burden upon some one else, or who are under **no legal compulsion** to pay them, are considered indirect taxes; but a tax upon property holders in respect of their estates, **whether real or personal**, or of the income yielded by such estates, and the payment of which **cannot be avoided**, are direct taxes. (emphasis added)

Under this definition, indirect taxes are those which involve "no legal compulsion," while direct taxes are those which "cannot be avoided."

In the rehearing, *Pollock v. Farmers' Loan & Trust Company*, 158 U.S. 601, 625 (1895), offered another perspective:

> [Alexander Hamilton] gives . . . a definition which covers the question before us. A tax upon one's **whole** income is a tax upon the annual receipts from his **whole** property, and as such falls within the same class as a tax upon that property, and is a direct tax, in the meaning of the Constitution. (emphasis added)

Thus, all taxes on the "whole" of an individual's property, "whether real or personal," were considered to be direct taxes. Such taxes must be paid and may not be avoided. The reason that they are considered mandatory is that it is presumed that we would have had a controlling voice in whether such taxes would be laid, thus making their assessment a self-assessment, and that we would be protected in the process of making such a self- assessment by the apportioning provision of the Constitution. The fairness in these apportioned taxes is implicit from the manner in which, first, they are supposed to be legislated and, second, in the manner in which their burden is supposed to be distributed.

Before direct taxes, like income taxes, may be laid, they must first be approved by Congress on an individual basis. That is, they must be passed into legislation only

lock, 158 U.S., at 621. As previously shown, appropriations for war and the need for funding for a war would be, and have been, an individual case requiring consideration for the laying of a direct tax. Such funding would be a case of a greater-than-usual need for financing. This was the intent of the framers of the Constitution and it was recognized as controlling at the time of the Sixteenth Amendment debates.

On February 23rd, 1910, Senator Norris Brown, of Nebraska, stated the use for which direct taxation on incomes through the proposed Sixteenth Amendment was intended. It "aim[ed] only to supply a reserve force in the Government"; *Congressional Record-Senate*, vol. 45, at 2246. This "reserve force" referred directly to the application of "[t]he income tax, to be used for the national defense." Senator Brown went on with his impassioned plea for the power to tax incomes:

> **When regiments must be equipped and armed, when battleships must be rushed to the scene of danger without counting the cost, this Government should have the power to lay its tax upon the incomes of those who have them. It is the last resort.** To withhold from the Government a power which may become so essential to its preservation is unpatriotic and cannot be justified. It is to make our country ready for such an **emergency** that I plead with the States to ratify this amendment. We may never need to enact an income-tax law. I hope the emergency I have described may never arise. But should it come, the Republic should be clothed with full and ample authority to lay a just share of the burden upon the incomes of the whole country. (emphasis added)

Income taxes had always been considered a tax of "last resort" in an "emergency" and, then, only upon "those who have" such incomes. In those days, only the wealthy had "incomes"; only the very wealthy were to be taxed.

The current version of income tax enforcement had its origins in an "emergency" situation—World War II. Part of the scam introduced in 1942 was the so-called Victory Tax, which was legislated under an appeal to the patriotism of the American people. When the "emergency" was over, the Victory Tax stayed under the new name "withholding," or, what are now the "information at the source" provisions which relate only to those involved in "a trade or business," or who pay "salaries [and] wages," among other things, to others.

The Victory Tax also resulted in the "collection of income tax at the source on wages." This little trick overcame the one problem that blocked the path of the tax tyrants—the natural tendency of a free man to resist unjust taxation. Instead of the I.R.S. agent having to come, hat in hand, to the wage-earner to ask him to volunteer a contribution, the agent could now sit back and wait for the ordinary wage-earner to come to him, asking for a part of his withholding to be refunded. All those who worked for someone else would automatically be thrown into the system. The political plan to con all those who formerly were not subject to income tax into the income tax system was quite evidently accomplished through the vehicle of wartime emotions. In 1939, only 4 million income tax returns were filed. By the end of the war that figure had ballooned to almost 50 million. "The net effect . . . was to tax lower- and middle-income classes that had **never** been taxed before"; Gabriel Kolko, *Wealth and Power in America* (Frederick A. Praeger, New York, 1962), at 33. This situation was never

number was smaller . . . In 1970, 81 percent of the population were covered"; see Goode, at 3. As the con became accepted, Congress progressively lowered exemptions to herd more and more of those who had never before been considered taxable into the perverted income tax system. In *The Rich and The Super Rich* (Bantam Books, New York, 1968), at 462, Ferdinand Lundberg said that the current income tax system "has been transformed largely into a permanent *wage tax*, a Gargantuan political joke on the workers."

In our representative system of government, Congress is morally impelled to go to the people to ask if it is alright to utilize such extreme measures as a direct tax. The apportionment requirement was the fundamental means of forcing Congressional Representatives to do just that. In that we, the people, were intended to be the government and the ultimate sovereign, such a process of asking the sovereign for permission to levy a tax would be an expected requirement. Congress' only real authority to tax comes from us. *State ex rel. Mullen v. Howell*, 181 P. 920, 924 (1919), stated:

> For the framers of the Constitution had well in mind—for they had lived in that time when our political system was being fashioned into concrete form—they understood, as we sometimes forget, that "the theory of our political system is that **the ultimate sovereignty is in the people, from whom springs all legitimate authority.**" Cooley, Constitutional Limitations (6th Ed.) p. 39. (emphasis added)

The wise Representative in Congress would, before voting on a direct tax, go to his constituency and ask what they wished him to do after explaining the issues. If the emergency was so overwhelmingly urgent, it might be wiser to forego a consultation with the voters, but that would rarely be the case; as crises have become more quickly brought to the attention of legislators, so has their ability to communicate to their constituents. No catastrophe occurred in the period during which the apportioning of the Civil War tax was accomplished. Those looking for a more recent case might be tempted to use Pearl Harbor as a cause to eliminate an appeal to the people. Unfortunately, that isn't exactly an appropriate example. Since the Department of War and Roosevelt knew of the impending attack, it wasn't really the surprise that we have been falsely led to believe that it was. See Pulitzer Prize-winner John Toland's *Infamy* (Berkley Books, New York, 1982). Under a less treasonous situation, it could be expected that no such "surprise" attack would have occurred.

After listening to his constituency and weighing their desires on any particular appropriation bill, the wise Representative would then be politically ready to cast his vote for or against appropriating funds for the emergency measure. The Representative who either regularly failed to obtain his voters' wishes on appropriations measures or ignored their expressed wishes could be brought to bear at the next biennial election and would likely find himself out of office. Such measures would have a strong tendency not to even be considered on a regular basis, first, because people do not particularly enjoy being told that the country is experiencing one crisis after another, and, second, because those legislators who did bring direct taxation measures up on the floor of the House of Representatives would quickly find their tax proposals and themselves subject to greater and greater scrutiny the more frequently they suggested spending "emergency" money out of the pockets of the American public.

do; it is voter intimidation of the legislators against profligate spending.

If a measure requiring a direct tax did manage to pass the House, the Senate would then have to face the same music. If the House decided, collectively, that appropriating funds for a particular adventure was politically wise, the Senate would then be required to either pass, reject, ignore or modify on the House bill. In a similar manner as the Representative, the wise Senator would take the pulse of his State constituency to determine if it was politically justified for him to take the plunge and vote for the levying of a tax directly upon his State. A Senator, of course, would be less prone to a relatively quick review of his voting behavior, but then if he had built a six- year history of consistent willingness to levy direct taxes upon his State, there wouldn't be much chance for him to ask for another chance.

Once a measure providing for a direct tax on income passed Congress, the measure would still be subject to veto by the President and approval, if challenged, by the courts. So, under the rigor imposed by apportionment, each and every time that our legislators got the idea into their heads to appropriate our estates for their adventures, or anyone else's, they would have to enter into, and successfully get past, the legislative process in order to do it, having to face their true masters, the American people, at some point in the process.

If a direct tax, whether wise or unwise, did hurdle the bulwark of freedom, the burden still had to be fairly and equally distributed by the constitutionally provided means of apportioning such taxes according to census or enumeration. Each State would be allocated a percentage of the tax burden directly related to its population. That allocated tax burden might be collected as a capitation tax. A capitation tax, or head tax, is a flat amount payable by every citizen, usually of voting age. That would be the least fair method of collecting a direct tax. The more normal and fair method would be a flat rate upon all incomes eligible to be taxed. This was the method intended by most of the legislators who debated the Sixteenth Amendment. The method now employed by the Internal Revenue Code is the Marxist- inspired progressive rate.

The protests made over the decision in *Pollock* were largely based upon the contention that it would be impossible to lay a direct tax because the inequities involved would prevent it. Under the theory of taxation advanced by *Pollock*, these imagined inequities consisted of an unjustly light burden being placed upon the Eastern States in which there was a heavy concentration of extremely wealthy robber baron types, like Rockefeller, Carnegie, Vanderbilt, Morgan, etc, i.e., men who had used highly questionable methods to build their awesome wealth. The assertion was made that those "who have amassed fortunes in all sorts of enterprises in other States have gone to New York to live" and that a "continual stream of wealth sets toward the great city from the mines and manufactories [sic] and railroads outside of New York"; see *Congressional Record-Senate*, *supra*, at 2540.

Any apportioned direct tax laid upon States which were so bloated with robber baron wealth would not significantly reach the great fortunes since, so the thinking went, the ratio of wealth to population in the States in which the robber barons were domiciled for purposes of taxation was so much higher than in States in which no robber barons lived that the relative amount of tax which would be assessed on the robber

was, in fact, the key stated intention to access the incomes of only the very wealthy.

Two situations of then-recent vintage bear telling. The States would have been responsible for collecting income taxes laid under apportionment. In that some of the States had already tried to levy progressive income taxes (that is, higher rates for higher incomes), there should have been no worry about missing out on taxing the great fortunes under apportionment. The great fortunes of the robber barons would still have been taxed under apportionment. They just would not have been taxed permanently as ordinary workers' wages are now taxed permanently without apportionment to protect those wages.

It wasn't as though the robber barons didn't deserve their reputations as ruthless businessmen. They did. However, the arguments in favor of raping the considerable estates of the robber barons not only appealed in a most unseemly fashion to the envy of the far less wealthy, they were also quite misdirected. The way to bring such men to justice was not through mangling our Constitutional guarantees, but through prosecutions for the frauds for which they were rightly accused and to bring any public servant to the same end who refused to aid in such prosecutions, or who deflected the prosecutions of such wealthy criminals through their public offices. The misdirection of the force of middle class opinion was managed by none other than the robber barons themselves who were, naturally, highly motivated in seeking to destroy the American system of justice which hung over their heads. They could have chosen no better means of accomplishing that goal than to pave the way for the return of that awful system of taxation without representation upon the fear of which system this country was founded and of which this country was declared independent. The entire fabric of the Constitution was woven around the fear of that system; destroy that central knot of apportionment, the protection against taxation without representation which tied the whole cloth together, and the rest would fall apart.

Whenever the political mind gets to cogitating too long about grandiose schemes, taxation becomes a dangerous weapon. Countering the contention made by New York Governor Hughes that the Sixteenth Amendment, if ratified, would threaten the sovereignty of the States, Senator Brown belittled any fears about wrongful usage of the taxing power proposed to be ceded to Congress by the Sixteenth Amendment. He labelled such fears "absurd" and went on to suggest that "[i]f Congress cannot be trusted to protect the States against a destructive exercise of the power to tax incomes, the States are in grave danger, whether the amendment is adopted or not. For a Congress so indifferent to the welfare of the Republic as to use this power to tax incomes to the injury of the several States, if shorn of that power, would find other ways and means to carry on the work of destruction"; see *Congressional Record-Senate*, *supra*, at 2247. In other words, Senator Brown believed that if Congress was going to become a renegade in taxing the sovereignty of the States (and, presumably, the sovereignty of the people thereafter), it would do so regardless of any bulwark of freedom preventing it from doing precisely that and, so, the bulwark would be of no effect. In other words, if tyrants will rule anyway, Brown wanted to make it easy for them. Brown's statements were not just "absurd," but high treason, offering, as they did, to open the American republic to a death blow. His own words confirm his understanding that the potential result of allowing the taxation of the States would be the destruction of

> [W]ith the States taken out of existence, what is there left? . . . The Nation exists solely as a union of the several States. **With the States destroyed, there is no Union.** (emphasis added)

A Freudian slip on Brown's part? Probably not. As Franklin Roosevelt once said, "**In politics, nothing happens by accident. If it happens, you can bet it was planned that way.**"

So, the intended process of apportioning direct taxes was supposed to be, and was, a barrier to unjust taxation. This is that provision in the Constitution which was supposed to keep "the power of granting their own money" in the control of the sovereign people and without which "no shadow of liberty could subsist"; see *Pollock*, 157 U.S., at 556. Prior to the fraudulent proclamation of the ratification of the Sixteenth Amendment, taxation was certainly not any more popular than it had ever been, but it was not the monstrosity that it has since become. The direct taxes in the form of income taxes which now fall upon the whole of the labor of the middle class have fallen without regard to fairness or equality. They are fraudulent and criminal.

Those who ponder the question—How will the government manage without the income tax?—have no need to worry. Apart from immense waste which would have to be eliminated from the federal budget, the federal administration would still be left with the one kind of tax which was always intended to provide for normal federal revenue—the excise.

Excises, which are indirect taxes, can be a dangerous weapon, too. They do have one characteristic which makes them more palatable than the other direct kind. They are not to be laid upon those things which are considered necessary for life, liberty and the pursuit of happiness, i.e., those things which it is our right to obtain or to keep; see *Davis, supra*.

The inherent danger in such considerations is the problem of determining what is necessary and what is not necessary for life, liberty and the pursuit of happiness. But such difficulties are not without solution. For instance, are cigarettes necessary to life, liberty and the pursuit of happiness? If one stopped smoking would they die? Absurd. If one stopped smoking would they be enslaved? Also absurd. If one stopped smoking would they be less happy? Perhaps, but, obviously if one were to stop smoking and be less likely to die from a smoking-related disease and free from the enslavement of that habit, it would be unlikely for that person to be unhappy for having stopped. Sales of cigarettes are a favorite target of excises, as are sales of liquor, tickets to entertainment and gaming events and all other activities of that type. Excises on these sorts of items are sometimes called "sin" taxes. "Luxury" taxes are excises laid upon the sale of watches, jewelry, perfume, and all manner of other expensive items. In the case of so-called "sin" taxes and "luxury" taxes, the excise is not collected until the item is sold and is paid by the consumer, not by the producer or seller. Hence, excises are also called "consumption" taxes.

Excises are also laid upon privileges granted by the state. Corporations operate under a privilege granted by the state to do business as a corporate entity. The yearly fees paid by corporations are an excise. Certain privileged occupations, like lawyers and bankers, and certain occupations clothed with the public interest, like auctioneers, are also subject to excises. It has been suggested that while the nonexistence of

Internal Revenue Code. The problem with that suggestion is that, under *Pollock*, such entities would be treated unequally and, thus, unconstitutionally by the enforcement of the Code only upon them, something which was never intended by Congress.

It may be seen, then, that excises are voluntary in nature. One does not need to smoke, drink or patronize movie houses and sporting events. If the choice is made to engage in that kind of activity, it is Constitutional to levy a tax upon that choice. One does not need to incorporate or to engage in the practice of law or in banking. If the choice is made to follow those occupations, it is Constitutional to levy an excise upon those choices. Those who are involved in common occupations in society cannot have excises laid upon their labor, their right to labor or any exercise of that right; see the *Davis* cases, *supra*.

Excises may be avoided by not buying those products which are not necessary to life, liberty and the pursuit of happiness and by not engaging in occupations which are similarly not necessary to life, liberty or the pursuit of happiness. In contrast, direct taxes are laid directly upon property. The owner of the taxed property, thus, has no choice but to pay the tax, e.g., payment is mandatory and may not be avoided. Excises which may be avoided are, thus, defined as indirect because they are laid upon the incidence of the sale of a commodity or upon the incidence of the taking of a license from the state. Such taxes need not be apportioned and, indeed, could not be. Excises laid upon the sale of liquor could not be apportioned because the Constitutional requirement that excises be uniform would be subject to inevitable failure. If in the State with 2% of the nation's population, only 1% of the nation's liquor was sold, an excise 100% higher would be have to be assessed in that State than in a State where the percentage of population and the percentage of liquor consumed were equal and 300% higher than in a State where the ratio of percentages of population to liquor consumed was reversed. Bankers who worked in States with relatively fewer bankers would similarly be taxed at a greater rate if excises upon that privileged occupation had to be apportioned.

The differences between direct and indirect taxes are profound. The framers of the Constitution recognized those differences and provided for completely different methods of assessing them. Those methods were not to be tampered with. A means of amending the Constitution was never, never, never intended to allow the destruction of that instrument. It is clearly and unassailably true that the requirements that direct taxes be apportioned and that indirect taxes be uniform were included in the Constitution because they were vital to the security of our fundamental freedoms and, indeed, to the survival of our nation.

The fraud of the Sixteenth Amendment ratification means that the apportioning requirement remains in force, but the effect of that Amendment, even had it actually been ratified, should never have been permitted to destroy the Constitution. The warning call was given, though. In an address to the General Court of Massachusetts on January 5th, 1910, Gamaliel Bradford, an author on the workings of government, said that "[t]he passage of this amendment [the Sixteenth] will mean the practical abolition of the Constitution of the United States." Mr. Bradford was absolutely correct.

In historical notes on taxation, the *Pollock* Court said that income taxes "have been always classed by the law of Great Britain as direct taxes"; see 157 U.S., at 572. The Court also said "that under the state systems of taxation taxes on real estate or personal property or the rents or income thereof were regarded as direct taxes"; see 157 U.S., at 573. So, taxes on the income-producing property or on its income were historically under the common law considered to be in the same class of taxes—direct taxes.

The contention of Assistant U.S. Attorney Robert L. Zimmerman in the appellate answer for the United States in *United States v. Leland G. Stahl*, United States Court of Appeals for the Ninth Circuit, No. 85-3069, at 2, is that:

> *Brushaber, supra*, teaches us that even prior to the enactment of the Sixteenth Amendment, Congress possessed the power to levy nonapportioned taxes on income derived from one's labor, that is, his employment. Such a tax was found to be an excise tax and not subject to the limitation of Article 1, Section 2. Any direct tax, such as a tax on property or income from personal investment, however, was required to meet the limitation of Article 1, Section 2, that is, it had to be apportioned.

But, the United States Attorney General has previously admitted to the following definition of direct taxes in *Thomas v. United States*, 192 U.S. 363, 367 (1904):

> The following are the only **direct** taxes, within the meaning of the Constitution, which have been decided between 1789 and 1896, to be such by the opinions of this court: 1. A capitation or poll tax. The Constitution in express terms regards a capitation or poll tax as a direct tax. 2. A tax on lands (that is, a direct tax on lands such as is ordinarily imposed). Hylton v. United States, 3 Dallas, 171; Pacific Insurance Co. v. Soule, 7 Wall. 433; Veazie Bank v. Fenno, 8 Wall. 533; National Bank v. United States, 101 U.S. 1; Scholey v. Rew, 23 Wall. 331; Railroad Company v. Collector, 100 U.S. 595; Springer v. United States, 102 U.S. 586; and since 1896: 3. A tax upon all of one's personal estate by reason of one's general ownership thereof. 4. A tax on the income of real property. 5. **A tax upon the income of personal property**. Pollock v. Farmers' Loan and Trust Co., 157 U.S. 429; 158 U.S. 601. (emphasis added)

This admission was made at a time when the issue of direct versus indirect taxes was a hot topic and, so, by this admission of the then Attorney General, current Attorney General Meese and his minions at the Department of Justice do know that income taxes upon personal property (including personal labor) were considered direct taxes and that such direct taxes upon the income of personal property were not permitted without apportionment prior to the purported ratification of the Sixteenth Amendment. They are, therefore, estopped, or prohibited, from taking the position that, rather than direct taxes, income taxes are excise taxes, or indirect taxes.

Zimmerman's assertion that "even prior to the enactment of the Sixteenth Amendment, Congress possessed the power to levy nonapportioned taxes on income derived from one's labor, that is, his employment," simply boggles the mind. In this one statement, Zimmerman poses the following brand new legal theories from outer space:

> 1. That even though taxes on income from all forms of property, that is, real and personal, were considered direct, some new creature existed, called "a nonapportioned tax on income," which Zimmerman claims that

tional right to his own labor;

3. That an individual's labor is defined as employment.

The Sixteenth Amendment was proposed to provide Congress with a means of overcoming what was considered to be the objectionable features of apportionment, namely, the impossibility of taxing incomes in times of emergency and the difficulty in taxing the great fortunes. The Supreme Court made its first landmark decision concerning income taxation relative to the Sixteenth Amendment in *Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1 (1916).

The *Brushaber* Court started by stating, at 10, that:

> [W]e are of the opinion, however, that the confusion [about the Sixteenth Amendment] is not inherent, but rather arises from the conclusion that the Sixteenth Amendment provides for a hitherto unknown power of taxation . . .

The confused belief that the Sixteenth Amendment enlarged the taxing power is characterized as an "erroneous assumption" and is quickly blunted by the Court; see *Brushaber*, at 12:

> That the authority conferred upon Congress by Section 8 of Article I "to lay and collect taxes, duties, imposts and excises" is exhaustive and embraces every conceivable power of taxation has never been questioned, or, if it has, has been so often authoritatively declared as to render it necessary only to state the doctrine. (emphasis added)

The crucial word is "conceivable." *Brushaber* did not discuss what taxes were "conceivable" and what taxes were not "conceivable," leaving the previous Supreme Court discussions on the limits of taxation intact. The Court then attempted to interpret *Pollock* by stating, *Brushaber*, at 16, that:

> [T]he conclusion in the Pollock case did not in any degree involve holding that income taxes generically and necessarily came within the class of direct taxes on property, but on the contrary recognized the fact that taxation on income was in its nature an excise entitled to be enforced as such unless and until it was concluded that to enforce it would amount to accomplishing the result which the requirement as to apportionment of direct taxation was adopted to prevent, in which case the duty would arise to disregard form and consider substance alone and hence subject the tax to the regulation as to apportionment which otherwise as an excise would not apply to it. (emphasis added)

This one very long sentence asserted that an income tax was "in its nature" an excise tax. It did not say, however, that an income tax was an excise tax, as Archer and Zimmerman now claim. Income taxes were still direct taxes, not indirect taxes. This phrase, "in its nature," may be that which has now been utilized by Assistant Attorney General Archer, in *House*, and Assistant U.S. Attorney Zimmerman, to rationalize their contention that Congress always had the ability to tax an individual's wage and salary without apportionment because such a tax is not an income tax, but, rather, an excise tax.

Brushaber, at 16, further said that a tax on income could be enforced like an excise tax until it was shown that the tax on income actually taxed the property from which

ing from property does actually tax the income producing property [illegible] a direct tax. If we can accept this one-sentence argument from *Brushaber* on its face, as the Attorney General would like us to, then, under *Pollock*, even income taxes could be enforced like excise taxes (necessarily without "legal compulsion") until it was shown that they were direct taxes. At that point, the apportionment requirement would come into play accompanied by direct tax unavoidability. The Sixteenth Amendment purported to do away with that requirement. So, under this argument, all taxes, direct or indirect, should be considered voluntary until such time as it is proven that they are direct taxes. Then, and only then, can those taxes be made involuntary and mandatory, but, since the Sixteenth Amendment was intended to do away with the apportioning requirement, no tax could ever be made involuntary and mandatory because, under *Brushaber*, income taxes would no longer be considered direct taxes for purposes of enforcement. This rather complicated situation is restated in *Brushaber*, at 19, in the Court's statement that there was one main function of the Sixteenth Amendment:

> [T]he purpose was not to change the existing interpretation except to the extent necessary to accomplish the result intended; that is, the prevention of the resort to the sources from which a taxed income was derived in order to cause a direct tax on the income to be a direct tax on the source itself, and thereby to take an income tax out of the class of excises, duties, and imposts, and place it in the class of direct taxes. (emphasis added)

In this lengthy, one-sentence statement, the Court positively stated that "the purpose of the Sixteenth Amendment was not to change the existing interpretation" of direct and indirect taxes, except to accomplish the purposes of the Sixteenth Amendment. So, the *Pollock* definitions did stand firm along with all the other previously valid definitions regarding this issue. An income tax was still a direct tax and an excise was still an indirect tax. This was a Constitutional requirement. The *Brushaber* Court could not strip the Constitution of its original meanings. It could only try to make the Sixteenth Amendment conform to what had gone before since the Sixteenth Amendment made no effort to amend any of the original meanings contained in the Constitution.

The purpose of the Amendment was, according to this statement from *Brushaber*, to prevent an income tax from reaching the source of the income, that is, to put an artificial barrier between the income and that which produced the income, so that *Pollock*, while still correct under pre-Sixteenth Amendment conditions, would now be made of no effect relative to its holding that taxes on income were, in effect, taxes on the property from which the income flowed and, thus, were required to be apportioned. With this artificial Sixteenth Amendment barrier put in place by *Brushaber*, a tax on income would no longer reach the property from which the income flowed. Thus, for purposes of enforcement only and not to change the fundamental interpretation of *Pollock*, a tax on income, levied under the Sixteenth Amendment, would no longer be taken "out of the class of excises, duties, and imposts, and [placed] in the class of direct taxes" requiring apportionment. Unfortunately, for Messrs. Archer and Zimmerman, this means that, if income taxes are left in "the class of excises, duties, and imposts" for purposes of enforcement, they cannot be mandatory, and, so, there must be a means by which the income against which they are laid can be avoided, just as

How could any tax on those items be voluntary? The truly asinine suggestion might be offered that if we don't work and, thus, don't have wages or salaries to be considered income, we won't be taxed on our income.

That suggestion is nonsense, of course, because ordinary people must earn a living, or else, they won't eat. The real answer lies in the nature of the labor of each individual in this country and how the definition of the word "labor" has been perverted from that which existed in the early 20th century and previously. In *Veazie Bank v. Fenno*, 8 Wall. 533, 543 (1869), it was said that:

> [P]ersonal property, contracts, occupations, and the like, have never been regarded by Congress as proper subjects of direct tax. (emphasis added)

This is a basic principle of direct taxation. Private property, contracts, and an individual's right to work in all the common occupations of society, which are all forms of property or are absolutely necessary to property ownership, cannot be directly taxed by Congress, whether apportioned or not. Under the principle announced in *Pollock*, taxing the income flowing from any income-producing property would be the same as taxing the income-producing property itself. Such property can never, therefore, be taxed directly. However, since each of these kinds of property are also protected under the Constitution as rights, and not privileges, the prohibition against taxing them in any manner should never be violated under any circumstances.

Veazie, at 544, went on to limit direct taxation even further:

> [I]n the practical construction of the Constitution by Congress, direct taxes have been limited to taxes on land and appurtenances, and taxes on polls, or capitation taxes.
>
> And this construction is entitled to great consideration, especially in the absence of anything adverse to it in the discussions of the Convention which framed, and of the conventions which ratified, the Constitution.

And again, *Veazie*, at 545:

> Chase, Justice, was inclined to think that the direct taxes contemplated by the Constitution are only two: a capitation or poll tax, and a tax on land. He doubted whether a tax by a general assessment of personal property can be included within the term direct tax.

Thus, in considering direct taxes, such taxes upon personal property, contracts (such as those for an individual's labor) and occupations, were not considered to be Constitutionally allowable. In other words, by the doctrine stated in *Pollock*, if they could be taxed at all, taxes on "personal property, contracts, occupations, and the like" could only be excises. But, excises cannot be placed upon that which is a fundamental right.

On March 1st of 1910, a letter sent by Senator Elihu Root of New York, an ally of the robber barons, to Frederick M. Davenport, a member of the Legislature of New York, which discussed the proposed Sixteenth Amendment, was entered into the *Congressional Record-Senate*, *supra*, at 2539-40. In that letter, Senator Root stated that "[a]ll the judges [in *Pollock*, reh.] agreed . . . that taxes on incomes derived from business or occupations need not be apportioned." In further interpreting *Pollock*, Root said that because of that decision, "income practically could not be taxed when derived either

be apportioned. That, certainly, was not impossible; it had been done before. And, Root's assertion still provided no refutation of *Veazie* that "personal property, contracts, occupations, and the like" had never been considered subject to direct taxation. They were exempt from direct taxation under the construction of the Constitution at the time of its adoption. And they were still exempt at the time of *Pollock* and they were still exempt at the time of the fraudulent ratification of the Sixteenth Amendment and they are still exempt. What was the nature of "personal property, contracts, occupations, and the like" at the time of *Pollock*?

The Congressional Record of the 1910 Senate, at 1695, shows that, on February 10th, Senator William Borah, of Idaho, pointed out to his fellow senators that "the words 'from whatever source derived' add nothing to the force or strength of the amendment itself. When the Constitution says that the Congress shall have power to lay and collect taxes, it conveys all the power that it would convey if it said 'shall have power to lay and collect taxes upon **property** from whatever source derived.'" The Senator was a bit ahead of himself at that point. The Constitution had not yet been amended to include the Sixteenth Amendment, although his statement was to the effect that it had. More significantly, Senator Borah realized, as did the rest of the Senators in that body, that income was a form of property derived from income- producing property which produced such income. This reasoning followed that of *Pollock* in which income was considered to be so infused with the characteristics of the property which produced it that the income was considered the same as the property.

In *Mowrey v. Mowrey*, 65 N.E.2d 234, 238 (1946), this characteristic of income was specifically related to labor by the Court in following several Illinois Supreme Court decisions:

> "Labor is the primary foundation of all wealth. The property which each one has in his own labor is the common heritage . . ."
>
> * * *
>
> [T]he right to labor is a property right and . . . the property which every man has in his own labor is the highest form of property. Labor in its ordinary acceptation is synonymous with employment, job or position and when it is said that a man has property in his own labor, such property **includes not only his labor itself but what it produces by way of wages or salary.** (emphasis added)

Thus, *Mowrey* explained a specific instance of the holding in *Pollock*. In the latter decision, the court considered taxing the income which flows from property to be no different than taxing the property itself, while in the former, the court considered the wage or salary which flows from labor to be no different than the labor itself. The labor of an individual, under *Mowrey* and *Pollock*, must be considered wage-, or salary-, producing personal property which may not be taxed any more than the wages or salary which it produces.

But the labor of each individual is much more than property owned by each such individual. It is an untouchable property right. *Butchers' Union, etc., Co. v. Crescent City, etc., Co.*, 111 U.S. 746, 757 (1884):

> The property which every man has in his own labor, as it is the original

hand, and to hinder his employing this strength and dexterity in what manner he thinks proper, without injury to his neighbor, is a plain violation of this most **sacred property.** (emphasis added)

The sacredness and inviolability of an individual's own labor as property and as a right in property along with that individual's right to make contracts for his labor are linked together by the protection afforded them under the Due Process Clause of the Fifth Amendment. In *Adkins v. Children's Hospital*, 261 U.S. 525, 545 (1923), the Supreme Court stated:

> That the right to contract about one's affairs is a part of the liberty of the individual protected by this clause [the Fifth Amendment], is settled by the discussions of this Court and is no longer open to question . . . Within this liberty are contracts of employment of labor . . . In *Adair v. United States*, [208 U.S. 161] . . . "The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell . . . In all such particulars the employer and employe have equality of right, and any legislation that **disturbs** that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land" . . . In *Coppage v. Kansas*, [236 U.S. 1, 10, 14], this Court . . . said: "Included in the right of personal liberty and the right of private property . . . is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are **exchanged** for money and other forms of property. **If this right be struck down or arbitrarily interfered with, there is a substantial impairment of liberty in the long established constitutional sense.** The right is as essential to the laborer as to the capitalist, to the poor as to the rich; for the vast majority of persons have no other honest way to begin to acquire property, save by working for money." (emphasis added)

Here again, the Supreme Court, even after the supposed ratification of the Sixteenth Amendment, acknowledged the strict definitions of an individual's labor as personal property and the money, in the form of wages or salary, which is exchanged for such labor as property. Even had the Sixteenth Amendment been ratified, it still would not have changed this fundamental relationship. The *Brushaber* Court admitted that the Sixteenth Amendment had not enlarged the taxing power and that Court would not change the previous interpretations of direct and indirect taxes, nor did it propose to add to the list of items against which each kind of tax could be levied. Those items, such as an individual's labor and its product, wage or salary, and contracts for such labor, which had been exempt from direct taxation before the Sixteenth Amendment were still exempt.

Under *Veazie*, occupations were also exempt from direct taxation, but what was meant by the word "occupations"? And why was it that Senator Root felt that income from occupations could be taxed directly without apportionment?

Bouvier's Law Dictionary, 8th Ed., Third Rev., published in 1914, explains taxes on occupations in the following manner, at 3228:

> There may be a tax upon occupations even if it duplicates taxes; Cooley, Tax. 385. They are usually by way of license, as distinguished from a tax

. . . peddlers, etc.

A license fee is a charge for the privilege of carrying on a business or occupation and is not the equivalent or in lieu of a property tax . . . A privilege tax may both regulate the business under the police power, and produce revenue, if authorized by the law of the state . . .

Privileged occupations, at that time, were positions subject to excises. On the other hand, taxes upon the inalienable, Creator- given rights of an individual to his labor, that which his labor produces, or any contract to exchange his labor for money could not have been the proper subjects for taxation, else the power to tax would be in conflict with the inalienable, Creator-given rights of the Constitution and its Bill of Rights. There is no such thing as a state-granted privilege to work in any of the occupations common to society at any given time. Only occupation privileges specifically granted by the state may be taxed. The absolute right of an individual to his labor and its fruits is one of our nation's great historical treasures and one of those inalienable, Creator-given rights, as set forth in *Allgeyer v. Louisiana*, 165 U.S. 578, 589 (1897):

> The liberty mentioned in that amendment [the Fourteenth] means not only the right of the citizen to be free from mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; **to earn his livelihood by any lawful calling; to pursue any livelihood or avocation,** and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a sucessful conclusion the purposes above mentioned. (emphasis added)

The inviolability of the labor of an individual used to be commonly recognized. The wages of laborers were at one time held exempt from garnishment; see *Bouvier's*, at 1819-20. The supremacy of the laborer's claims in the mechanic's lien in front of the claims of all other creditors is a surviving vestige of the judicial recognition of the necessity to protect the laborer's wage.

Occupation taxes can, thus, only be laid upon occupations which accrue from state-granted privilege. This concept was enunciated by Chief Justice John Marshall, as noted by Senator Borah, *Congressional Record*, *supra*, at 1698:

> All subjects over which the sovereign power of a State extends are objects of taxation. But those over which it does not extend are, upon the soundest principles, exempt from taxation. This proposition may almost be pronounced self-evident. Sovereignty of a State extends to everything which exists by its own authority or is introduced by its permission; but does it extend to those means which are employed by Congress to carry into execution the powers conferred on that body by the people of the United States? We think it demonstrable that it does not.

Neither is any state capable of granting a right already given by the Creator. Neither may any state arrogate to itself a claim of having granted such a right. Then, what is "every **conceivable** power of taxation" to which the state may lay claim? That which is not exempt from its taxing power. Only such rights which exist by the state's permission or upon its authority may be taxed. Creator-given rights, Constitutional rights,

It may easily be seen from the authority cited in the discussion above that, in the past, the United States Supreme Court has taken judicial notice of some basic essentials of the labor of an individual. Those essentials include the following:

1. That labor is included in the class of services and is considered to be the personal property of the individual;
2. That money in the form of wages, salaries, etc., is included in the class of property;
3. That the money received in payment for labor is actually a part of the individual's right in his own labor;
4. That labor may be exchanged for money in a property-for- property contractual arrangement;
5. That these property rights are "sacred and inviolable";
6. That the loss of these rights means a loss of liberty as surely as incarceration does, and the Fifth Amendment protects this liberty against such loss;
7. That no government may legally justify **disturbing** the liberty to sell one's individual labor, or to receive property in any form for such a sale.

What is the definition of a disturbance of these rights? *Black's Law Dictionary*, 5th Ed., defines "Disturbance of common", at 428, as:

> At common law, the doing any act by which the right of another to his common is incommoded or **diminished** . . . (emphasis added)

And "Disturbance of franchise", at 428, as:

> The disturbing or incommoding a man in the lawful exercise of his franchise, whereby the **profits arising from it are diminished.** (emphasis added)

It goes without saying that taxation upon either an individual's labor, or upon the "property" which is given in "exchange" for such labor, "diminishes" both the liberty to sell it and the liberty to receive property in exchange for it, whether one is speaking of natural persons exercising their common law rights or of artificial, or privileged, persons exercising their franchise rights. This follows from the principle stated in *Pollock* and *Mowrey*, and the principle, stated in *Adkins* (that labor is property), in that taxing the wage or salary which flows from labor, the wage-, or salary-, producing property, is no different than taxing the labor itself.

Under *Adkins* and *Mowrey*, property rights in labor are practically married to the property received for such labor in the form of wages or salary, from which it necessarily follows that taxation upon either labor or upon the "property" in "exchange" for such labor "diminishes" both the liberty to sell it and the liberty to receive property in exchange for it. Under *Pollock*, an income tax laid upon an individual's wage or salary received in exchange for that individual's labor is actually laid upon the labor of the individual.

The very foundations of this nation are poured out from the concept of the freedom and liberty to work and not be hindered one iota by the state in such an endeavor. In *Butchers'*, *supra*, at 762, the Court stated that:

> the Declaration of Independence, which commenced with the fundamental proposition that "all men are created equal, that they are endowed **by their Creator** with certain **inalienable rights**; that among those are life, liberty and the pursuit of happiness." This right is a large ingredient in the civil liberty of the citizen. (emphasis added)

And, it was further held, *Butchers'*, at 764, that:

> [T]he liberty of pursuit—the right to follow any of the ordinary callings of life—is one of the privileges of a citizen of the United States.

When the *Butcher* Court spoke, at 764, of "privileges", by no means was it referring to state-granted privileges as is evident by the statement at 762. These references are to privileges granted by the Creator Himself and acknowledged by the Constitution. The Court addressed this situation in *Murdock v. Pennsylvania*, 319 U.S. 105, 115 (1942):

> It is claimed, however, that the ultimate question . . . is whether the state has given something for which it can ask a return. That principle has wide applicability . . . But it is quite irrelevant here. This tax is not a charge for the enjoyment of a privilege or benefit bestowed by the state. The privilege in question exists apart from state authority. It is **guaranteed** the people by the Federal Constitution. (emphasis added)

The assertion of Assistant Attorney General Archer and Assistant U.S. Attorney Zimmerman that Congress always had the ability to tax wages and salaries without apportionment is, as the discussion above shows, totally fraudulent and one which Mr. Archer, as a very well paid and very wealthy Assistant Attorney General, knows is totally fraudulent. Zimmerman has implied, moreover, that the Sixteenth Amendment was intended only for the purpose of getting at the profits received as income and not at compensation for services, or wages and salaries. Mr. Zimmerman knows that, at the time of the writing of the Constitution, apportionment was not included as a means of protecting "property owners or investors" but individuals, from abusive taxation. That is why the *Pollock* Court called apportionment "one of the bulwarks of **private** rights and **private** property." *Black's*, *supra*, at 1076, defines "private" as,

> Affecting or belonging to private individuals, as distinct from the public generally.

That "property owners or investors" happen to have benefited from the Constitutional prohibition against laying direct taxes except under apportionment is of no consequence relative to the fundamental reason for requiring direct taxes to be apportioned—the protection of the private individual from abusive taxation.

* * *

The reason why we have laid such great emphasis upon the construction, or explanation, of words in their legal and lawful sense is that a long train of abuses of the definitions of those words has caused the usurpation of power from the people by those who were intended to serve us. Over the major portion of this century, this gradual perversion of definition has been perpetrated upon several of the key words involved in tax statutes.

The word "labor", which used to mean two completely different things, that is, the labor of an individual and the labor of many employed by a business or corporation,

vicinity. In a speech delivered by Senator John Sherman on March 15th, 1882, he said:

> Everyone must see that the consumption of the rich does not bear the same relation to consumption of the poor, as the **income** of the rich does to the **wages** of the poor. (emphasis added)

It was obvious to Sherman and he insisted that it must be obvious to everyone else—the rich have "income" and the poor get "wages." They were different then and they are supposed to be different now. In a typically arrogant and unsupported whimsy, the United States Court of Appeals for the Seventh Circuit made the statement that "WAGES ARE INCOME" in a footnote contained in *United States v. Koliboski*, 732 F.2d 1328, 1329 (CCA7 1985). The reason why the Seventh Circuit didn't bother to cite any supporting prior legal precedent, as is usual and normal when making such unequivocal statements, is that there isn't any.

And what has been done with that simple word "income"? Why is it that the judges of a United States Court of Appeals are unable to supply any support for their contention that "WAGES ARE INCOME"? The origins of the word "income" and the method of the gradual, total adulteration of its meaning for purposes of taxation are again of significant interest to this discussion.

Congress is not permitted to define what the Constitution means. For that reason, Congress is, also, not permitted to define what constitutes "income" as it relates to taxation because of the crucial Constitutional questions which arise upon any discussion of taxation. In *Eisner v. Macomber*, 252 U.S. 189, 206 (1920), the Court noted that:

> [I]t becomes essential to distinguish between what is, and what is not 'income' . . . Congress may not, by any definition it may adopt, conclude the matter, since it cannot by legislation alter the Constitution, from which **alone** it derives its power to legislate, and within whose limitations **alone**, that power can be lawfully exercised. (emphasis added)

This prohibition preventing Congress from conclusively defining the word "income" is derived from the separation of powers. Congress may legislate, but it is the duty of the courts to lay a statute side by side with the Constitution to make sure that the statute does nothing contrary to the fundamental law. Therefore, Congressional statutes are supposed to be compared to the Constitution by the judiciary.

The courts, aware of the Congressional intent to tax only the incomes of corporations and of the very wealthy as that intent was contained in the debates leading up to the Corporation Excise Tax Act of 1909 and the proposed Sixteenth Amendment, found that the one absolutely essential ingredient in the definition of income is gain. After the supposed ratification of the Sixteenth Amendment, this definition was set forth in a case involving a mining corporation; see *Stratton's Independence v. Howbert*, 231 U.S. 399, 415 (1913):

> [F]or "income" may be defined as the gain derived from capital, from labor, or from both combined . . .

This definition of income has been used repeatedly by the courts. The explanation in *Eisner*, *supra*, at 207, is such that the emphasis is placed upon the derivation of income from the subclass of property called capital:

> growth or increment of value in the investment; but a gain, a profit, something of exchangeable value proceeding from the property, severed from the capital however invested or employed, and coming in, being "derived," that is, received or drawn by the recipient [the taxpayer] for his separate use, benefit and disposal;—that is income derived from property.

Income tax, in the sense meant to be applied by Congress, was a tax upon income which was "derived from capital." It would seem to be quite self-evident that the capital, or property, from which an income could be derived for the purposes of taxation could only be that capital, or property, directly owned by the recipient of the income. As currently applied, however, the income tax is laid upon an ordinary worker's wages or salary. Under the intent of Congress and this judicial definition of "income," that would seem to be an impermissible target of the tax.

For the sake of argument, if wages or salary can be considered income, that supposed income must have been derived either from capital, or from employed labor, or both combined, or from the sale of a capital asset. What capital does an ordinary worker invest in his job? None. Does an ordinary worker employ somebody else to do his labor for him? Of course not. Is there a capital asset sold by a worker at a profit? No. How, then, would the derivation of income come about? If the capital invested by the very wealthy is considered to be a factor in the ability of a worker to work, then the ordinary worker's wage or salary derives from the capital of the very wealthy. If it can be considered a privilege to work for another by virtue of the capital invested by the owner of the employing firm, then, that twisted reasoning could convert the ordinary worker's Creator- given right to his own labor into a privilege and, thence, his wage or salary could be converted into income derived from someone else's privilege. If the ordinary worker's labor can be considered a capital asset, sold in exchange for money, then that reasoning would convert his wage or salary into income, but, an ordinary worker's labor is a Creator-given right, not a capital asset.

As we have seen from *Mowrey*, an individual's labor and what it produces are fused together, not severed, a doctrine that follows *Pollock*. The intent of the Sixteenth Amendment was not, and could not be, to tax items which were formerly exempted from tax. According to *Stanton v. Baltic Mining Co.*, 240 U.S. 103, 112 (1916), "the Sixteenth Amendment conferred no new power of taxation." *Peck & Co. v. Lowe*, 247 U.S. 165, 172-73 (1918), stated it another way:

> [The Sixteenth Amendment] does not extend the power of taxation to new or **excepted** subjects, but merely removes occasion . . . for an apportionment among the states of taxes on income, whether it be derived from one source or another.

Therefore, the severing of income from property to avoid taxing the income-producing property cannot be applied to the merger of the labor of an individual and his wage or salary. Creator-given rights, like an individual's right to his own labor and the unsevered fruits thereof, had always been "excepted" from both direct taxation and indirect taxation. The Sixteenth Amendment, even if ratified, could not have severed that labor-wage relationship.

The "property" from which income "proceeds" are those properties designated in *Stratton's*, that is, either capital, labor or both combined. But, on point, in the context

person granted a privilege by the state. The word "income" applies in a very specific way to corporations. And, that word must still mean the same thing as then; see *Merchants' Loan & Trust Co. v. Smietanka*, 255 U.S. 509, 519 (1921):

> There can be no doubt that the word [income] must be given the same meaning and content in the Income Tax Act of 1916 and 1917 that it had in the Act of 1913. When to this we add that in Eisner v. Macomber, supra, a case arising under the same Income Tax Act of 1916 which is here involved, the definition of "income" which was applied was adopted from Stratton's Independence v. Howbert, supra, arising under the Corporation Excise Tax Act of 1909, with the addition that it should include "profit gained through sale or conversion of capital assets," there would seem to be no room to doubt that the word **must** be given the **same** meaning in **all** of the Income Tax Acts of Congress, that was given to it in the Corporation Excise Act, and what that meaning is, has now become definitely settled by decisions of this Court. (emphasis added)

In other words, the word "income" in any income tax statute passed by Congress, from then until now, can have no other meaning than that of a corporation profit from either capital, labor or both combined, or from a sale or conversion of capital assets, or from interest. Corporate profits are received by corporations and by the owners of corporations. It is this definition, given in the Corporation Excise Tax Act, which "must" be given to the word "income" even today. In *Conner v. U.S.*, 303 F. Supp. 1187, 1191 (DC S.D. Tex, Houston Div. 1969), the preceding views were followed for subsequent income tax statutes:

> Whatever may constitute income, therefore, must have the **essential** feature of **gain** to the recipient. This was true when the sixteenth amendment became effective, it was true at the time of Eisner v. Macomber, supra [252 US 189 (1920)], it was true under sec. 22(a) of the Internal Revenue Code of 1939, and it is likewise true under sec. 61(a) of the Internal Revenue Code of 1954. **If there is no gain there is no income.** (emphasis added)

On June 16th, 1909, the Corporation Tax Act of 1909 was proposed by President Taft to levy an excise tax of 2% upon the net income of "all corporations and joint stock companies for profit, except national banks (otherwise taxed), savings banks, and building and loan associations," *Congressional Record-Senate*, Vol. 44, a 3344-45. This tax was intended as an "an excise tax upon the privilege of doing business as an artificial entity and of freedom from a general partnership liability enjoyed by those who own the stock." Taft, at the same time, recommended the drafting of a proposed Constitutional amendment to dispose of apportionment.

After the reading of Taft's message to the Senate, Senator Thomas Gore, of Oklahoma, moved "that the President's message just read be referred to the Committee on Finance, with instructions to that committee to report, on or before Friday next, a joint resolution proposing an amendment to the Constitution of the United States authorizing the levy and collection of an income tax in accordance with this message."

The debates in the Senate upon the Corporation Excise Tax Act show the clear understanding which Congress had regarding the meaning of the income tot he reached by that statute. Senator Frank Flint, of California, in the *Congressional Record-*

I may state to the Senator what I said last night when I was asked the [illegible] construction of this amendment [the Corporation Excise Tax amendment], and that was that it is an excise tax upon the privilege of doing business.

On July 2nd, 1909, Governor Charles Evans Hughes, of New York, commented further upon the income tax amendment proposed by Taft, *ibid*, at 4013:

> It is apparant [sic] that the business or occupation of the corporation is not the object sought to be reached by this law.... I do not believe that anyone who studies this amendment believes that it is the business conducted which is sought to be taxed; but the incomes of these corporations are in fact sought to be subjected to the tax . . .
>
> That is what was said in the President's message; that is what he said in his speech of acceptance; that is what he told his Attorney-General to do—to draw an income-tax law that would be consistent with the construction of the Constitution; and that is what this is in its essence, in my judgment—an income tax, a tax upon all incomes from all sources of the corporations enumerated.

On August 28th, 1913, Senator Albert Cummins, of Iowa, referring to the power which Congress supposed that it had following Philander Knox's fraudulent proclamation of the ratification of the Sixteenth Amendment, said in the *Congressional Record-Senate*, Vol. 50, at 3843-44:

> Our authority is to levy a tax upon incomes. I take it that every lawyer will agree with me in the conclusion that we can not levy under this amendment a tax upon anything but an income. I assume that every lawyer will agree with me that we can not legislatively interpret the meaning of the word "income". That is purely a judicial matter. **We cannot enlarge the meaning of the word "income".** We need not levy our tax upon the entire income. We may levy it upon part of an income, but we can not levy it upon anything but an income; and what is an income must be determined by the courts of this country when the question is submitted to them.
>
> * * *
>
> The word "income" had a well defined meaning before the amendment of the Constitution was adopted. It has been defined in all the courts of this country. When the people of the country granted to Congress the right to levy a tax on incomes, that right was granted with reference to the legal meaning and interpretation of the word "income" as it was then or as it might thereafter be defined or understood in legal procedure. **If we could call anything income that we pleased, we could obliterate all the distinction between income and principal.** Whenever this law comes to be tested in the courts of the country, it will be found that the courts will undertake to declare whether the thing upon which we levy the tax is income or whether it is something else, and therefore we ought to be in the highest degree careful in endeavoring to interpret the Constitution through a statutory enactment.
>
> * * *
>
> **[O]bviously the people of this country did not intend to give to Congress the power to levy a direct tax upon all the property of this country without apportionment.** (emphasis added)

Can there be any doubt about the meaning of the word "income" which was intended to be taxed by both the Corporation Tax Act of 1909 and by the income tax

What is the real relationship of wages to income? We refer to 48 Illinois Stats., 39m-2:

> For all employees, other than separated employees, "wages" shall be defined as compensation for labor or services rendered, whether the amount is determined on a time, task, piece, or any other basis of calculation. Payments to separated employees shall be termed "final compensation" and shall be defined as wages, salaries, earned commissions, earned bonuses, and the monetary equivalent of earned vacation and earned holidays . . .

Black's Law Dictionary, supra, at 1416, defines "wages" as:

> A **compensation** given to a hired person for his or her services. (emphasis added)

The word "salary" is defined by *Black's*, at 1200, as:

> A reward or recompense for services performed.

The word "compensation" is defined by *Black's*, at 256, as:

> **Remuneration for services rendered, whether in salary, fees, or commissions** . . . giving back an **equivalent** in either money which is but the measure of value, or in actual value otherwise conferred; recompense in value. (emphasis added)

Bouvier's Law Dictionary, 8th Ed., 3rd Rev., at 3417, defines "wages" as:

> A compensation given to a hired person for his or her services.

The word "salary" is defined by *Bouvier's*, at 2983, as:

> A reward or recompense for services performed . . .
> "Wages and salary seem to be synonymous convertible terms . . ."

The word "compensation" is defined by *Bouvier's*, at 572, as:

> A reciprocal liberation between two persons who are both **creditors and debtors** of each other . . . It resembles in many respects the common-law set-off. The principal difference is that a set-off must be pleaded to be effectual; whereas compensation is effectual without any such plea . . . It takes place by mere operation of law, and extinguishes reciprocally the **two debts** as soon as they exist simultaneously, to the amount of their respective sums. It takes place only between two debts having **equally** for their object a sum of money, or a certain quantity of consumable things of one and the same kind, and which are **equally** liquidated and demandable. It takes place whatever be the cause of the debts . . . (emphasis added)

The courts have repeatedly agreed with these definitions. For example, *In re Gurewitz*, 121 F. 982, 983 (CCA2 1903), the Court said:

> The word used is "wages," and no technical definition of this word is found elsewhere in the act, probably because the lawmakers concluded that **when a word so plain and simple was used no further explanation was necessary.** (emphasis added)

means the agreed **compensation for services rendered** by . . . those who have served him in a subordinate or menial capacity and who are supposed to be dependent upon their earnings for their present support. (emphasis added)

In *Glandzis et al. v. Callinicos*, 140 F.2d 111, 113 (CCA2 1944):

> [W]ages are the **compensation** paid by an employer for services rendered to him by others . . . (emphasis added)

In *Johnson v. Anderson-Dunham Concrete Co., Inc.*, 31 So.2d 797, 798 (1947):

> The former section, it is to be noticed, employs the word "wages", while the latter "compensation"; but, unquestionably these words are used synonymously. That which each section has reference to is remuneration for the services rendered by the employee.

In *Kirkland v. Jefferson County*, 12 So.2d 347, 348 (1943):

> Salary earned and unpaid is unquestionably a **debt**, whether it be owing by an agency of government or individual. (emphasis added)

In *U.S. v. Embassy Restaurant, Inc., et al*, 359 U.S. 29, 37 (1959):

> Courts have long held that **compensation for services rendered** is a valid definition of "wages" . . . (emphasis added)

Because of the compensatory nature of wages, salaries, etc., there can be no income in such cases. Income has been properly defined as 'gain' or 'profit' again and again. The central feature of gain, which is required in order for income to accrue to anyone, is wholly absent from compensation in the form of wages, salaries, and commissions, i.e., services personally rendered. In *Oliver v. Halstead*, 86 SE.2d 858, 859, 196 Va. 992 (1955), the Court put a wide gulf between wages and gain:

> There is a **clear** distinction between "profit" and "wages" or compensation for labor. "Compensation for labor **cannot** be regarded as profit within the meaning of the law. The word 'profit' as ordinarily used, means the gain made upon any business, or investment-a **different** thing altogether from mere compensation for labor." Commercial League Association of America v. People ex. rel. Needles, Auditor, 90 Ill 166. (emphasis added)

In *Laureldale Cemetery Assoc. v. Matthews*, 47 A.2d 277, 280, 345 Pa. 239 (1946), the Court emphatically confirmed this distinction:

> Reasonable compensation for labor or services rendered is **not** profit. (emphasis added)

Wages are an equal exchange of an individual's labor for money. They are not earned due to any privilege granted by the state. As such, wages are not gain, or profit, and, therefore, may not be income, and they may not be taxed as income in the corporate sense because an excise tax may not be levied against the right to wages.

How has it come about that our wages and salaries are taxed as income? Perhaps the problem lies not in the word "income" which Congress is not permitted to define and which the Courts have defined as "gain" or "profit." Perhaps the problem lies in the grafting of one little word onto the word "income" in order to change its meaning entirely and, thus, to enable Congress to skirt the prohibition against defining

all the other illicit children of the 1040—"taxable income," "adjusted gross income," ad nauseum.

Shortly after the close of the ratification process in the Sixteenth Amendment, the Solicitor General for the United States proposed a definition for "gross income" in *Doyle v. Mitchell Brothers Co.*, 247 U.S. 179, 184-85 (1918):

> [T]he learned Solicitor General has submitted an elaborate argument in behalf of the Government, based in part upon theoretical definitions of "capital," "income," "profits," etc., and in part upon expressions quoted from our opinions in Flint v. Stone Tracy Co., 220 U.S. 107, 147, and Anderson v. Forty-two Broadway Co., 239 U.S. 69, 72, with the object of showing that a conversion of capital into money always produces income, and that for the purposes of the present case the words "gross income" are equivalent to "gross receipts": the insistence being that the entire proceeds of a conversion of capital assets should be treated as gross income, and that by deducting the mere cost of such assets we arrive at net income.
>
> * * *
>
> Whatever difficulty there may be about a precise and scientific definition of "income," it imports, as used here, something entirely distinct from principal or capital either as a subject of taxation or as a measure of the tax; conveying rather the idea of **gain or increase arising from *corporate* activities**. As was said in Stratton's Independence v. Howbert, 231 U.S. 399, 415: "Income may be defined as the gain derived from capital, from labor, or from both combined."
>
> Understanding the term in this natural and obvious sense, it cannot be said that a conversion of capital assets invariably produces income. If sold at less than cost, it produces rather loss or outgo. Nevertheless, in many if not in most cases there results a gain that properly may be accounted as a part of the "gross income" received "from all sources"; and by applying to this the authorized deductions we arrive at "net income." In order to determine whether there has been gain or loss, and the amount of the gain, if any, we must withdraw from the gross proceeds an amount sufficient to restore the capital value that existed at the commencement of the period under examination. (emphasis added)

In this case, the United States Supreme Court rejected the contention that all receipts of a corporation were includable in "gross income." The same argument was rejected in *So. Pacific Co. v. Lowe*, 247 U.S. 330, 335 (1918):

> We must reject in this case, as we have rejected in cases arising under the Corporation Excise Tax Act of 1909 (Doyle v. Mitchell Bros. Co., 247 U.S. 179, 38 Sup. Ct. 467.... Hays, Collector, v. Gauley Mountain Coal Co., 247 U.S. 189, 38 Sup. Ct. 470 ...), the broad contention submitted in behalf of the government that all receipts— everything that comes in—are income within the proper definition of the term "gross income," and that the entire proceeds of a conversion of capital assets, in whatever form and under whatever circumstances accomplished, should be treated as gross income.

The "broad contention" which would have swept nearly everything received by a corporation into its "gross income" was applied instead to everything received by an individual. The successful flim-flam of the Victory Tax Act was an important key

of Internal Revenue v. Smith, 324 U.S. 177, 180-81 (1945):

> Section 22(a) of the Revenue Act defines "gross income" subject to the Act as including "gains, profits, and income derived from salaries, wages, or compensation for personal service * * * of whatever kind and in whatever form paid * * * " Treasury Regulations 101, Art. 22(a)-1 provides: "If property is transferred * * * by an employer to an employee, for an amount substantially less than its fair market value, regardless of whather the transfer is in the guise of a sale or exchange, such * * * employee shall include in gross income the difference between the amount paid for the property and the amount of its fair market value to the extent that such difference is in the nature of (1) compensation for services rendered."

Here, Congress created a tiny opening in the definition of "gross income", an opening through which all the ordinary wage and salary earners in this nation have been squeezed. First, "gains, profits, and income" were "derived from salaries, wages, or compensation for personal service". The former did not comprise the latter; the former could be provided by the latter if whatever could be saved from wage or salary was subsequently invested and earned a return. The statute did make it sound as though salaries and wages could be considered income. Second, an ordinary wage earner could receive "gross income" from his employer if property was transferred from the employer to the employee and if that property was transferred in such a way as to result in gain, profit or income to the employee. For instance, if the employee were given a car worth $5000 for his individual labor for which he would have been paid $4000, the employee would have been liable for the difference in value of $1000 as gross income. This was still in line with the opinion in *Goodrich v. Edwards*, 255 U.S. 527, 535 (1921):

> It is thus very plain that the statute imposes the income tax on the proceeds of the sale of personal property to the extent only that gains are derived therefrom by the vendor, and we therefore agree with the Solicitor General that since no gain was realized on this investment by the plaintiff in error no tax should have been assessed against him.

Perhaps the reason the Court of Appeals for the Seventh Circuit did not provide support for its exclamation that "WAGES ARE INCOME" had something to do with the fact that the I.R.S. considers the labor of every ordinary wage and salary earner to be worthless. That perspective would, of course, result in a gain to the extent of 100% of an ordinary worker's wage or salary. This is referred to as the "zero-base" determination of gain from wage and salary by the Internal Revenue Service. According to this "zero-base" theory, "one has a zero basis in his labor"; see Howard Zaritsky, May 25th, 1979, update, John R. Luckey, September 26th, 1984, Congressional Research Service Report, No. 84-168 A 784/275, *Some Constitutional Questions Regarding The Income Tax Laws*, at 11. In other words, human beings have no value. The worker's effort is worth nothing, his experience is worth nothing and his integrity is worth nothing. Were it to become widely known that this is the position of the I.R.S., most people would probably be exceptionally offended.

The total inequity of the "zero-base" theory of the I.R.S. is easily demonstrated by comparing the tax treatment given to holes in the ground called "oil wells." Such

"deplete" the presumed value from any income accruing from the hole's productive output. Should human beings be presumed to have value and future productive capability, just like holes in the ground? Should human beings, at the very least, be allowed to "deplete" their presumed value from any of their productive output? The I.R.S. says absolutely not.

If the labor (including work experience and all the other factors which go into labor) of the ordinary wage and salary earner are considered essentially worthless, everything earned by them, whether by personal service rendered or not, is gain. However, the only accurate definition of "gain derived . . . from labor" in the context of income taxation is the gain derived from the productivity of a labor force, such as the gain derived by a corporation from the efforts of a labor union work force. This is the thrust of judicial history in the United States on income tax; see *United States Constitution Annotated*, at 1554-1561.

The value of an individual's labor to himself and his family is, however, of far greater importance than merely putting out a product or service the sale of which winds up in the profits of a business. In *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 340 (1969), we are told that:

> [W]ages [are] a specialized type of property presenting distinct problems in our economic system.

The specialized nature of wages is characterized by its importance to the very survival of the family of a wage earner; see *Sniadach*, at 340. This is, of course, related to the statements of *Adkins* and *Gurewitz*, *supra*, which address the laborer's situation relative to his wage as his sole means of support. In spite of this characterization of the worker's wage as necessary to the survival of his family, and as their sole support, wages are considered by the I.R.S. to be "gain." *The Federalist Papers*, No. 79, attribute such actions to tyranny:

> In the general course of human nature, *a power over a man's subsistence amounts to a power over his will.* (emphasis in original)

Adam Smith, the economist who gave America his seminal ideas on how to run a free country, in a comment on excises which is equally applicable here, said, "[I]t must always be remembered, however, that it is the luxurious and not the necessary expense of the inferior ranks of people that ought ever to be taxed." He further stated that, "The middling and superior ranks of people, if they understood their own interest, ought always to oppose all taxes on the necessities of life, as well as **all direct taxes on the wages of labor**"; see *Tax Philosophers, Two Hundred Years of Thought in Great Britain and the United States*, Donald J. Curran, Ed. (The University of Wisconsin Press, Madison, 1974), at 20.

The original intent of the Sixteenth Amendment to get at the great fortunes of the very wealthy has been perverted by Congress, the judicial system and the I.R.S. into an excuse for prying loose the inalienable, Creator-given rights from the natural citizen. This was, and is, an unconstitutional and impermissible application of the Sixteenth Amendment, which was never meant to destroy the liberties which this application has, and continues, to destroy. Even the independence of the judges has been

cation process and of the attitude of the agency of the Internal Revenue as it was founded at the time of the laying of the first direct tax on incomes during the Civil War; see L. E. Chittenden, *The Recollections of President Lincoln* (Harper & Bros., New York, 1891), at 345:

> [T]he first internal revenue act of 1862 was framed upon the theory that the taxpayers were the natural enemies of the government.

Who has made themselves the natural enemy of the ordinary wage and salary earner?

The United States Supreme Court has not completely succumbed to the attempt to make a composite out of the words "income" and "wage." In *Central Illinois Public Serv. Co. v. United States*, 435 U.S. 21, 31 (1978), the Court admitted that the final blending of definition had not yet been fully completed:

> Decided cases have made the distinction between wages and income and have refused to equate the two in withholding or similar controversies. Peoples Life Ins. Co. v. United States, 179 Ct. Cl. 318, 332, 373 F.2d 924, 932 (1967); Humble Pipe Line Co. v. United States, 194 Ct. Cl. 944, 950, 442 F.2d 1353, 1356 (1971); Humble Oil & Refining Co. v. United States, 194 Ct. Cl. 920, 442 F.2d 1362 (1971); Stubbs, Overbeck & Associates v. United States, 445 F.2d 1142 (CA5 1971); Royster Co. v. United States, 479 F.2d, at 390; Acacia Mutual Life Ins. Co. v. United States, 272 F.Supp. 188 (Md. 1967).

Nevertheless, in recent cases like *Koliboski*, *supra*, the courts have tried, to finish the gradual transfer of "wage" into "income." The con has largely been effective. Very few people understand that the courts have been playing a slow-motion shell game these words to effect an awful "Gargantuan political joke" upon the wage-earner who is not laughing at his tax burden.

In *The Rape of the Taxpayer* (Random House, New York, 1973), at 7-8, Philip M. Stern tells about some people who are laughing:

> To give a concrete example, Jean Paul Getty is one of the richest men in the world: he is said to be worth between a billion and a billion and a half dollars, and to have a daily income of $300,000. If Congress were to apply to Mr. Jean Paul Getty the standard of the Sixteenth Amendment, and were to tax his entire "income, from whatever source derived" at the current tax rates, Mr. Getty would, each April 15, write a check to the Internal Revenue Service for roughly $70 million. But Jean Paul Getty is an oilman; and, as is well known, oilmen enjoy a variety of special tax escape routes (see Chapter 11). As a result, according to what President Kennedy told two United States Senators, Mr. Jean Paul Getty's tax, at least in the early Sixties, amounted to no more than a few thousand dollars. Annual tax saving to Mr. Getty (at 1973 rates): $70 million.

Mr. Stern recited statistics comparing the tax burden of families whose average income ranged between $471,220 and $1,703,750 to an ordinary wage-earner. The former paid taxes of 3% to 4% of their income as opposed to the latter who paid 16%; see Stern, at 16-17. The top 1/10 of 1% of the population in terms of income held 69.2% of the tax-free State and municipal bonds; see Stern, at 62. It's probably safe to say that there are no wage-earners in the top 1/10 of 1%. Yet there is no withholding

Wage-earner's generally do not derive such income, nor do they generally deriv any income at all. Wage-earner's cannot really derive income until they invest thei wages and receive some kind of gain, or profit from investing their hard-earne wages. The wage-earners who can accumulate enough money to invest after their ordi nary living expenses eat up their check are not common. Those who derive enoug income from investments to be validly subject to income tax are fewer still. In thos few instances, the source of income consists of whatever leftover wage is accumulate and subsequently successfully invested for profit.

Under the current system of withholding and the "zero-basis" theory, the sourc (that which produces income) of a wage- earner's income cannot be his paycheck. Th paycheck didn't produce itself. Furthermore, because the wage-earner's labor is con sidered worthless by the I.R.S., that labor cannot be productive of income, althoug no one would be surprised if the I.R.S. were to say that it's possible to get somethin from nothing.

The practical effect of defining "wages" as income for collection at the source is bit startling. An estimate of every wage-earner's income is made at the time at whic the wage- earner receives his or her wage. The basis for the estimate is the wag Under these circumstances, "wages" are not "income," but rather, they are merely th estimate of potential true income which the wage-earner may ultimately earn an then, not from the employee's perspective but from the employer's perspective; w

form, and within a reasonable time of the enactment of the provision thus construed. Cooley on Con. Lim. (5th Ed.) p. 67. As stated by that learned author:

* * *

In United States v. Graham, 110 U.S. 219, 221, 3 Sup. Ct. 582, 28 L.Ed. 126, Chief Justice Waite thus stated the law:

"Such being the case, **it matters not what the practice of the departments may have been, or how long continued, for it can only be resorted to in aid of interpretation, and it is not allowable to interpret what has no need of interpretation.** If there were ambiguity or doubt, then such a practice, begun so early and continued so long, would be in the highest degree persuasive, if not absolutely controlling, in its effect. But with language clear and precise, and with its meaning evident, there is no room for construction, and consequently no need of anything to give it aid."

* * *

In Webster v. Luther, 163 U.S. 331, 342, 16 Sup. Ct. 963, 967, 41 L.Ed. 179, Mr. Justice Harlan stated the rule in these words:

"The practical construction given to an act of Congress, fairly susceptible of different constructions, by one of the executive departments of the government, is always entitled to the highest respect, and in doubtful cases should be followed by the courts, especially when important interests have grown up under the practice adopted. * * * **But this court has often said that it will not permit the practice of an executive department to defeat the obvious purpose of a statute.**"

In Fairbank v. United States, 181 U.S. 283, 311, 21 Sup. Ct. 648, 959, 45 L.Ed. 862, Mr. Justice Brewer said:

"We have no disposition to belittle the significance of this matter [meaning contemporaneous construction]. It is always entitled to careful consideration, and in doubtful cases will, as we have shown, often turn the scale; but **when the meaning and scope of a constitutional provision are clear it cannot be overthrown by legislative action, although several times repeated, and never before challenged.**" (emphasis added)

In other words, the meanings of words which existed at the time of legislation must control, not the meanings of words as they have later been altered. This is the principle applied in *Edwards v. Cuba Railroad*, 268 U.S. 628, 631 (1925):

> The Sixteenth Amendment, like other laws authorizing or imposing taxes, is to be taken as written and is not to be extended beyond the meaning clearly indicated by the language used.

And it is the principle which must be applied so much more strongly relative to tax statutes; see *Gould v. Gould*, 245 U.S. 151, 153 (1917):

> In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the Government, and in favor of the citizen.

The meaning clearly indicated at the time the Sixteenth Amendment was being debated is nothing like what is now being suggested by those who purport to repre-

been given a spine-breaking, about-face treatment by Messrs. Archer and Zimmerman. Their claim that the income tax as laid against individuals is an excise, under *Brushaber*, and that Congress has always had the right to impose excises upon a worker's wages is completely and utterly frivolous and without merit. It is even willfully frivolous. The status of the right to work is very well settled. The protections noted by *In re Opinion Of The Justices*, 143 N.E. 808, 808-11, 247 Mass. 589 (1924), are typical:

> No statute, by attempting to outlaw a natural right, can deprive one of **the opportunity to earn his livelihood, and the rights to labor and do ordinary business are natural, essential, and inalienable, partaking of the nature both of personal liberty and of private property.**
>
> * * *
>
> **Working by an artisan at his trade, carrying on an ordinary business, or engaging in a common occupation or calling cannot be subjected to a license fee or excise.** These plainly are not affected with a public interest.
>
> * * *
>
> Manifestly no statute by attempting to outlaw a natural right can deprive one of the opportunity to earn his livelihood. **The rights to labor and to do ordinary business are natural, essential and inalienable, partaking of the nature both of personal liberty and of private property.** (emphasis added)

As previously shown, excises may only be levied upon privileges and luxuries, not upon rights and necessities. *Brushaber* said only that income taxes were "in the nature" of an excise for purposes of enforcement. *Brushaber* did not provide for any new taxing power, such as the ability to tax rights and necessities.

The line of judicial reasoning which Messrs. Archer and Zimmerman are actually following is that under *Pollock*, excises, or indirect taxes, must be voluntary and not mandatory, and under *Brushaber*, income taxes are excises, i.e., indirect taxes, and under *Butchers'*, *Allgeyer*, *Adkins* and *Mourey*, wages and salary are property proceeding from the property called labor which is an inalienable, sacred and inviolable right. Therefore, when these cases are taken together, income taxation, with or without the Sixteenth Amendment, cannot be anything else except a voluntarily assessed and paid excise upon an inalienable, Creator-given right, which would be all right except for the fact that, under *Murdock*, inalienable, Creator-given rights cannot be taxed, and it has never been held that they may be taxed whether voluntarily or involuntarily. But, the inalienable, Creator- given right to a pursuit of happiness, including the right to labor and wages, may no more be taxed, than the inalienable, Creator-given rights to life and liberty. No one may tax usage of the First Amendment, or of the Fourth, or of the Fifth or of any of the other inalienable, Creator-given rights whether stated or unstated in the Constitution. Such an authority has never been delegated to our servants in our governmental system. Anyone who would dare to wield such usurped authority is a traitor against the Constitution.

As it was expressed at Cresson, Pennsylvania, on June 30th, 1897, before the Pennsylvania Bar Association by the president of that association:

> The right to labor for the production of property is ... 'a necessary consequence of the right to live.' . . .

> which enables a man to dispose of his own services upon his own terms is but the liberty of contract. The right to dispose of one's own surplus to acquire the surplus of another, or to supply the necessities or requirements of others is but the right of contract. Any restriction placed upon this right is a restriction upon the liberty of contract which is an **inalienable right**, being included in the right to acquire and possess property. (emphasis added)

The president of the Pennsylvania Bar? **Philander Knox.**

The income-tax-as-an-excise position has, of course, been a staple of the so-called "tax protester" movement for years. That assertion is, and has been, laden with immense problems for the Internal Revenue Service and for every I.R.S. agent who has ever coerced a citizen into doing anything related to the collection of income taxes. The difference is that now an Assistant U.S. Attorney and an Assistant Attorney General are saying that very same thing.

Perhaps the inspiration for the daring proposition of Archer and Zimmerman came in the Congressional Research Service Report, *Some Constitutional Questions Regarding The Income Tax Laws*, *supra*, by Zaritsky and Luckey. This sophomoric fraud is a travesty. In answering the question, "Is the Federal Income Tax a direct or indirect tax?", Messrs. Zaritsky and Luckey made the following unfathomable assertion:

> The status of the income tax has not always been clearly determinable from the decisions of the United States Supreme Court, though for the past sixty-four years the Court has taken the view that the Federal income tax is an indirect tax authorized under Article I, Section 8, Clause 1 of the Constitution, as amended by the Sixteenth Amendment to the Constitution.

It would, of course, be quite unnecessary to amend an ability to levy an indirect tax via the Sixteenth Amendment. Indirect taxes have never been required to be apportioned. If the income tax were an indirect tax, the proposal, and the subsequent sordid attempt at ratification, of the Sixteenth Amendment would have been a futile exercise in the wasting of time.

In a demonstration of verbal acrobatics in interpretation of *Pollock*, Messrs. Zaritsky and Luckey tried to intimate a differentiation, for purposes of income taxation, between gain, or income, upon investments and salaries. Then, in the course of a mid-air somersault, an income tax imposed upon "gains, profits, or income . . . derived from . . . salaries, or from any profession, trade, employment, or vocation . . ." was turned into a "tax burden solely upon wages" by Z. and L. It's little wonder that these legal aerialists claim that the Supreme Court's position on income tax "has not always been clearly determinable."

Had Zaritsky and Luckey done their homework, *Pollock* would have given them some clear, simple answers. Certainly, there are differences between income from real estate and income from personal property, but not for purposes of income taxation. *Pollock*, 158 U.S., at 637, made the following holding:

> We are of opinion that taxes on personal property, or on the income of personal property, are [like those pertaining to real estate] **direct taxes.**
>
> The tax imposed by . . . the act of 1894, so far as it falls on the income of real estate and of personal property, being a direct tax within the meaning

one entire scheme of taxation, are necessarily invalid. (emphasis added)

As we have shown, personal labor is not only personal property, but the most sacred personal property. For the sake of argument, even if such a sacred possession were taxable, such a tax would still be a direct tax under *Pollock*, not an excise, or indirect tax. Without the Sixteenth Amendment, an income tax could not be levied either upon that property or upon its "income." *Pollock*, 158 U.S., at 628, stated:

> The Constitution does not say that no direct tax shall be laid by apportionment on any other property than land; on the contrary, it **forbids *all* unapportioned direct taxes** . . . (emphasis added)

Had the talented duo from C.R.S. boned up in their own *United States Code Congressional & Administrative News*, Vol. 3, 83rd Cong., 2nd Sess., 1954, they would have come across the Congressional intent in legislating Section 61(a) of the 1954 Internal Revenue Code, defining "gross income." The definition was "based upon the 16th Amendment and the word 'income' [was] used in its constitutional sense." The "contitutional sense" of income is in *Stratton's, supra*.

Had they done a lot of work, they might have noted that from the very beginning of income taxation, wages were not meant to be taxed. Adam Smith said that taxing the wages of the ordinary employee was useless and inexpedient because such a tax could "have no other effect than to raise them somewhat higher than the tax"; see Curran, at 20.

The British believed in differentiating between money received because of an individual's labor and that received as a gain on property because an individual's ability to work has a finite span whereas income from property can last indefinitely. Therefore, wages were never regarded as equal to income before the tax laws; Curran, at 34.

In a speech delivered by Representative Thaddeus Stevens, the Radical Republican, on April 8th, 1862, he noted that, in passing upon the second income tax bill, the fruits of personal labor were not to be affected; see *Congressional Globe*, 37th Cong., 2nd Sess., at 1576-77:

> While the rich and the thrifty will be obliged to contribute largely from the abundance of their means, we have the consolation to know that no burdens have been imposed on the industrious laborer and mechanic; that the food of the poor is untaxed; and that no one will be affected by the provisions of this bill whose living depends solely upon his manual labor.

In the case of the recent income tax of the United States, the number of persons who paid this tax when the exemption (in 1868) was $1,000 was 259,385; and when the amount of exemption was raised to $2,000, the number of taxable persons was reduced to 116,000, and subsequently ran down to 71,000

The income tax which arose as result of this legislation reached only 259,385 Americans who owned property in 1868, out of a total population of about 40 million. Only 71,000 paid that income tax in 1872; see David A. Wells, "The Communism of a Discriminating Income Tax," *North American Review*, March 1880.

Wells, *supra*, an advisor to the federal government on taxes, gave the historical definitions of direct and indirect taxes which the United States Court of Appeals for the Sixth Circuit has recently tried to revise in order to justify their fraudulent position

> There is a marked distinction, founded on sound philosophy, between a direct and an indirect tax. An indirect tax, whoever may first advance it, is paid voluntarily and primarily by the consumer of the taxed article; but a direct tax, on the contrary, always has in it an element of compulsion, not necessarily on the person who advances the tax in block but on the person who is compelled to use or consume the taxed property or its product. A tax upon land compels all persons to pay a direct tax, for no one can live except upon land or its products, and a tax upon land is therefore a direct tax. (A land tax has been conceded by the United States Supreme Court to be a direct tax, Hylton v. The United States....)
>
> A tax upon a few articles, like whisky, tobacco, licenses upon certain classes of business, can always be avoided as a primary tax, or can be paid at discretion; but there is nothing voluntary in a tax upon all real and personal property or their income. **Human beings cannot subsist without some form of personal property, and therefore a tax upon all personal property or its income is of necessity compulsory and not voluntary. Any general assessment of personal property on its income must also, as well as assessments on real estate, constitute a direct tax....**
>
> There is nothing compulsory or unequal in an ordinary license tax. If the license is high, no one is compelled by law, or the laws of competition, to engage in the business, and but few persons will engage in it; and thus the average profits of the taxed business, by the regular laws of competition, will finally reach the average profits of other like employments or investments. But an income tax is always compulsory, for it is imposed on income from all sources. Some form of property is a necessity, and therefore a tax upon all forms of property or its income **is a direct or unavoidable tax, and not a voluntary tax.** (emphasis added)

Following the historic definition, *Pollock* and the authorities cited therein, held that an excise is avoidable, being a voluntarily paid tax. No one may force a citizen to pay an excise. And nothing in the Sixteenth Amendment nor in *Brushaber* changes the voluntary nature of excises. Furthermore, neither direct taxes, nor excises, may be laid upon Creator-given rights. Yet, the I.R.S. and its agents, the U.S. Attorneys, the Attorney General and the federal courts have all consistently and flagrantly engaged in abusive tactics to force involuntary exactions in property and/or liberty from American citizens under the illusory authority of sections of the Internal Revenue Code related to income taxes.

In order to escape the onerous hammer of their wrongful assumption of jurisdiction over any income tax case, Archer and Zimmerman are now blowing the tax-protester horn, that is, individual income taxes are actually excises. If the assertion of the Attorney General made in *Thomas, supra*—that income taxes on the income of personal property are direct taxes—can now be magically transformed, by Archer and Zimmerman, and now the Sixth Circuit, into an assertion that such income taxes are actually excises, i.e., indirect taxes, then these miserable excuses for Americans could find shelter from their culpability. That will just not wash, however. Income taxes have been claimed by the Attorneys General of this country to be direct taxes, not indirect taxes, for this entire century. When those, who have been labeled so-called "tax protesters" by the I.R.S. and federal prosecutors, made such assertions about federal income taxes, they have been adjudged "frivolous" and "meritless" and assessed double costs and sanctions, in addition to having their private property and/or their lib-

with the very same assertions.

In spite of the "frivolous," "meritless" situation now fantasized by Archer, Zimmerman and the Sixth Circuit, neither they, nor any I.R.S. agent, U.S. Attorney or judge ever had jurisdiction to engage in any of the coercive enforcement proceedings which have commonly been used to take the property and/or liberty of American citizens. After years of telling the so-called "tax protesters" that their income-tax-as-an-excise contention was "frivolous" and "meritless," these white-collar thieves may not now turn back and attempt to utilize that same argument to separate the Sixteenth Amendment from the current system of individual income taxation. **That's not just "frivolous" and "meritless"; that's fraud.** The contemptible gall with which Archer and Zimmerman have fabricated this trashy piece of evasive nonsense cannot be allowed to act as their shield.

The war has been fought with words. The failure to understand and enforce the meaning of a handful of words has allowed bandits, such as Archer and Zimmerman with the aid of the judges and the I.R.S., to win many battles against the principles of freedom and justice. The difference between direct and indirect, and between privilege and right, the true meaning of income and labor, the definitions of excise and property, the significance of apportionment and of uniformity are all terms which have been assaulted by the tyrants who have tried their best to force us into tax slavery. They have vigorously and without the slightest hesitation bent and mangled these words, contriving to indict us with their perversions.

Archer, Zimmerman and the Sixth Circuit apparently have a desire to graduate from being accessories after the fact in the great income tax fraud to becoming principals. These men are no longer innocent dupes of Philander Knox; they now are knowing and willful participants in the attempt to suppress what Knox has done and what the I.R.S., the federal prosecutors and the federal judiciary have continued to do to the American people—tax their wages and salaries without jurisdiction.

A Final Word on Words

The U.S. Attorneys have further implied that our conclusion is that the Internal Revenue Service has no jurisdiction or authority to enforce the internal revenue laws, calling that red herring position meritless and frivolous. We do not assert that the Internal Revenue Service has no jurisdiction or authority to enforce the internal revenue laws. There are many internal revenue statutes which do not relate directly to income taxation or its collection. Those statutes come under that class of duties, excises and imposts, which are all provided for under the Constitution as explained above. These do not have their basis in the Sixteenth Amendment and we have no quarrel with the validly conferred jurisdiction and authority of the Internal Revenue Service to enforce internal revenue statutes which do have a valid constitutional foundation, but none of the internal revenue statutes as they relate to federal income taxation of private individuals have such a foundation. Our position might very well be considered meritless and frivolous if we were to actually make the assertions which the U.S. Attorneys have deceptively attempted to attribute to us.

But, any attempt to saddle us with statements which imply the existence of "internal revenue laws," as they relate to income taxation of private individuals, is an attempt to

U.S. Attorneys and the federal judges want to avoid at all costs because they have taken jurisdiction and wielded authority to enforce income tax statutes founded upon the Sixteenth Amendment fraud, which cannot and do not exist in law.

The time has come to indict these men not just with a word, but with their knowing, willful and malicious crimes against the American people in defrauding them of their rights in private property and liberty under the Constitution. The charge against them is well stated by Justice Tucker in the Appendix (preface) to the 1803 Edition of *Blackstone's Law Commentaries*, at 18:

> [I]f in a limited government the public functionaries exceed the limits which the constitution prescribes to their powers, every such act is an act of usurpation in the government, and, as such, **treason** against the sovereignty of the people, which is thus endeavored to be subverted, and transferred to the usurpers. (emphasis added)

The fight will not be easy. As Ferdinand Lundberg, *supra*, at 463, has said, the super-rich have "gone to a great deal of trouble and expense to devise and maintain this [tax] structure, [and] are not going to stand idly by and see it dismantled. They will use every considerable power at their command to defeat all substantial reforms." Their lackies have shown an eagerness to put in prison, or to make destitute, anyone who would dare to challenge their system. These men and women have sold themselves out to the robber barons. Their crimes, and those of their taskmasters, must not go unpunished.

Our goal is clear. We must restore the apportionment clause because it can still be the great bulwark of freedom it was intended to be by the framers of the Constitution, protecting us against oppressive and unnecessary direct taxation, to ensure a fair and equitable distribution of any tax burden incurred by direct taxation and to ensure fair and equal representation.

It is a fundamental principle that a federal court is of limited jurisdiction and that it must not take jurisdiction unless it positively appears that the taking of jurisdiction is justified. But, it is also true that the courts are required to take jurisdiction if such jurisdiction is given to them. In *Ex parte Young*, 209 U.S. 123, 143 (1907) (quoting Chief Justice Marshall in *Cohens v. Virginia*, 6 Wheat. 264, 404), the Court stated:

> It is most true that this court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be **treason** to the Constitution. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is to exercise our best judgment, and conscientiously perform our duty. (emphasis added)

According to Marshall, it is a treasonable offense for federal judges to avoid issues properly before them, as much as it is a treasonable offense to take jurisdiction of issues over which they cannot rightly exercise authority.

In *Boyd v. Olcott*, 202 P. 431 (1921), the Supreme Court of Oregon took jurisdiction over a challenge to the validity of a constitutional amendment without fear. That court held that without an express grant of jurisdiction to some other body, the judiciary was required to take jurisdiction over the issue. Their jurisdictional reasoning was given at 437-38, thusly:

> It must be remembered that the question involved here is not whether a new constitution has been adopted, nor whether an amendment to the Constitution is such as to preserve the republican form of our government; and consequently precedents like Luther v. Borden, 7 How. 1, 12 L. Ed. 581 and Pacific States Tel. & Tel. Co. v. Oregon, 223 U.S. 118, 32 Sup. Ct. 224, 56 L. Ed. 377, are not in point. Stated broadly, and subject to whatever rules of evidence may be applicable, such a question is in this jurisdiction, as it is in other jurisdictions, **a question for the courts to determine, unless committed by the Constitution to a special tribunal, with power to make a conclusive decision.** McConaughy v. Secretary of State, 106 Minn. 392, 417, 119 N.W. 408; 12 C.J. 880; 6 R.C.L. 32. The conclusion that the question last mentioned is a judicial question was reached in Kadderly v. Portland, 44 Or. 118, 131, 74 Pac. 710, 75 Pac. 222, where this court expressed its views through a then member of the court, who is distinguished for his learning and wisdom; and so on the faith of Kadderly v. Portland, it may be accepted

been legally adopted by the Legislature and approved by the people, unless the power to investigate and decide is lodged elsewhere by the express terms of the Constitution. (emphasis added)

Thus far, the federal courts which have had the Sixteenth Amendment issue before them have treasonously evaded their duty, principally by claiming that the entire federal amending process is a political question upon which they cannot rule. Of course, it is true that the process itself is a political process, nevertheless, the political question issue does not prohibit judicial review relative to federal amendments at all times. And when there is no barrier to jurisdiction in the federal courts, the courts must not, and may not, avoid the questions which arise under their jurisdiction.

Several Congressman have claimed that the Sixteenth Amendment fraud is a purely judicial issue. Congressman Ronald V. Dellums (D-California) said that "only the judiciary can decide the validity of a law." California Congressman Tom Lantos claimed that "[t]he only arena in which [such] a matter . . . can be decided is through the courts." When informed of various court rulings that the issue of fraud in the Sixteenth Amendment was a political question for which Congress was responsible, Congressman Henry Hyde (R-Illinois) said, "The hell it is! It's a judicial question." Other politicians have given Pontius Pilate his due respect. Congressman Martin J. Russo (D-Illinois), who lives two doors down from Bill Benson, upon being shown a portion of the documentation which Bill gathered, and asked what he intended to do, said, "I'm not going to do anything. I'm going to sit idly by and watch what happens." With that statement, Congressman Russo flirts with a date with destiny in the Supreme Court. Others have resorted to the frivolous, meritless position that the courts have already ruled upon the validity of the Sixteenth Amendment. The courts have already ruled upon the validity of the Sixteenth Amendment based upon the same kind of incomplete evidence existing in the Japanese-American internment cases. Such rulings cannot, of course, have any authority when confronted with the newly discovered evidence of fraud and conspiracy to commit fraud that undermined the entire ratification process of the Sixteenth Amendment.

The issue of the fraud in the ratification process of the Sixteenth Amendment is completely within the jurisdiction of the federal courts. Undoubtedly, this question is one which any court "would gladly avoid," but they may not.

* * *

Coleman v. Miller, 307 U.S. 433 (1939), has been cited as a precedent for avoiding political questions inherent in any issue regarding the process of amending the federal Constitution. The issue involved in the purported ratification of the Sixteenth Amendment, however, is not a political question because it's not about the amending process; it's about a fraud committed in the process of amending.

It was argued by Knox's Solicitor in his memorandum of April 20, 1911 that problems with legislative procedure at the State level which were evident in various ratification resolutions were to be ignored. The several opinions in *Coleman* have been used to defend that position against any investigation into the wrongdoing of Knox and his Solicitor and to prevent any adjudication of their fraud. None of the opinions carries the weight of a majority.

at 456. Four of the judges in *Coleman* said, at 457-58:

> Proclamation under authority of Congress that an amendment has been ratified will carry with it a solemn assurance by the Congress that ratification has taken place as the Constitution commands. Upon this assurance a proclaimed amendment must be accepted as a part of the Constitution, leaving to the judiciary its traditional authority of interpretation.

These four justices then went on to disagree with the implication of the opinion of the "majority" of two that there is authority in the courts "to make judicial interpretation of the exclusive constitutional authority of Congress over submission and ratification of amendments"; see *Coleman*, at 458. The other three disagreed with the other six that the petitioners in *Coleman*, who were Kansas legislators, had standing because they did not have "individualized legal interest"; see *Coleman*, at 465. The last three then went on, at 469, to favorably cite *Nixon v. Herndon*, 273 U.S. 536 (1927), Chief Justice Holmes discussing why the Court could take jurisdiction over a case nominally political because it involved individualized interest:

> "That private damage may be caused by such political action and may be recovered for in a suit at law hardly has been doubted for over two hundred years."

The opinion of the Court stated by the two is, of course, absolutely not on point in the Sixteenth Amendment issue. The Sixteenth Amendment issue is not concerned with time limits for ratification relative to amendment vitality.

The assertion that the "solemn assurance" of Congress is conclusive upon the courts might be valid where there was no fraud in the inducement. But, any solemn assurances related to the Sixteenth Amendment were based upon the fraudulent acts of Philander Knox and his Solicitor, as well as those of many co- conspirators in the States. If the solemn assurance of Congress is based upon a fraud, then that assurance isn't very solemn and should by no means be used as a foundation for acceptance of the Sixteenth Amendment "as a part of the Constitution." Finally, any individual who has ever been conned into filing a 1040 or paying an income tax or audited or prosecuted under the income tax statutes has been harmed in a very individualized manner by the political action of Congress in basing their proclamation of the ratification of the Sixteenth Amendment upon the fraud of Philander Knox and his co-conspirators and, thus, has standing to have the issue of the Sixteenth Amendment heard in court.

* * *

Just what is a political question? *Black's Law Dictionary*, 5th Ed., defines "political questions" in the following manner:

> Questions of which courts will refuse to take cognizance, or to decide, on account of their purely political nature, or because their determination would involve an encroachment upon the executive or legislative powers.
>
> A matter of dispute which can be handled more appropriately by another branch of government is not a "justiciable" matter for the courts. However, a state apportionment statute is not such a political question as to render it nonjusticiable. Baker v. Carr, 369 U.S. 186, 208- 210, 82 S.Ct. 691, 705-706, 7

In exploring *Baker v. Carr*, 369 U.S. 186 (1962), we find, at 210, that the determination of whether a particular issue may be considered by a court as a "political question" has a two-pronged test:

> We have said that "In determining whether a question falls within [the political question] category, the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations." Coleman v. Miller, 307 U.S. 433, 454-455, 59 S.Ct. 972, 982, 83 L.Ed. 1385.

In other words, the courts should be circumspect about questioning the final actions of the other branches of our governmental system and the courts should only proceed in the determination of such matters if "satisfactory criteria" exist for such a determination. This two-pronged test is quite appropriately a barrier between the judiciary and the other two branches of our governmental system—the legislative and the executive. But, contrary to the manner in which the courts have asserted it so far, the "political question" is not an absolutely barrier to judicial review. *Baker*, goes on, at 210, to clear up this "confusion" about political questions:

> The nonjusticiability of a political question is primarily a function of the separation of powers. Much confusion results from the capacity of the "political question" label to obscure the need for case-by-case inquiry. Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or **whether the action of that branch exceeds whatever authority has been committed**, is itself a delicate exercise in constitutional interpretation, and **is a responsibility of this Court as ultimate interpreter of the Constitution**. (emphasis added)

From this statement of the Supreme Court, it may be seen that under an allegation that the political department has overstepped its authority, it is the duty of the judicial department to inquire into such a matter. This is simply an exercise of the checks and balances which are supposed to be inherent in our system. The duties of Secretary of State Knox have been characterized as ministerial under the control of the political department. However, it has long been held by the U.S. Supreme Court that "with respect to ministerial duties, an act or refusal to act is, or may become, the subject of review by the courts"; see *Noble v. Union River Logging Railroad*, 147 U.S. 165, 171-72 (1893) (citing *Marbury v. Madison*, 1 Cranch 137 (1803)).

The *Baker* Court went on to say, at 214, that:

> [I]t is **not** true that courts will never delve into a legislature's records upon such a quest . . . (emphasis added)

Baker was used in *Goldwater v. Carter*, 444 U.S. 996 (1979) in finding that what was claimed to be a political question was justiciable. Subsequent to *Goldwater*, *Dyer v. Blair*, 390 FSupp. 1291 (ND IL 1981) and *Idaho v. Freeman*, 529 FSupp. 1107 (D ID 1981) found questions related to the Equal Rights Amendment to be justiciable. In fact, in *Dyer*, at 1299-1300, a unanimous three- judge panel said that:

> **[S]ince a majority of the Court [in *Coleman*] refused to accept [the political question] position** . . . and since the Court has on several occasions decided questions arising under article V, even in the face of "political question"

In a case of some renown, *United States v. Nixon*, 418 U.S. 683 (1974), the assertion of the political question defense was denied in an investigation of allegations of President Nixon's concealment of wrongdoing by his staff.

The Sixteenth Amendment issue concerns the action of Philander Knox, the Secretary of State of the United States in 1913, and whether he exceeded the authority committed to him by concealing certain facts about the ratification process of the proposed Sixteenth Amendment, facts which he was duty bound as an attorney and a public servant to reveal. If Knox did exceed his authority, then it can by no means be said that his action of proclamation should be final, and it is, also, quite evidently the duty of the courts to entertain this issue.

This federal judicial duty also exists on a another level if various State governments were guilty of fraud. The Supreme Court has said that the amendment of the United States Constitution is a federal function; see *Hawke v. Smith*, 253 U.S. 219 (1920). The federal courts should, thus, be capable of taking jurisdiction in that the process of amending would involve fraud committed in the process of executing those federal functions. Where State officials have committed fraud in the federal amending process, they cannot, obviously, be claimed to have ratified a proposed federal amendment. If it could be said to be otherwise, then fraudulent certifications of ratification, however proper in form, could subvert the United States Constitution and the courts would be powerless to rectify the intentional wrong committed against the entire nation by a handful of men. In a hastily prepared, unnumbered report from the Congressional Research Service, dated May 20th, 1985, entitled *Ratification of the Sixteenth Amendment* and authored by one Thomas B. Ripy, the argument is made that the nation should quietly submit itself to such an eventuality without question or recourse to the courts.

Under *Baker*, even if the Sixteenth Amendment issue is political, which we deny, when criteria may be found for judging whether Secretary Knox exceeded his authority and whether the various State governments exceeded their authority, then we rightly may demand that the federal courts give the question of the existence of the Sixteenth Amendment to the United States Constitution a full and fair hearing. To this effect, *Baker*, *supra*, at 214, stated:

> Further, clearly definable criteria for decision may be available. In such case the political question barrier falls away: "**[A] Court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared . . .** " Chastleton Corp. v. Sinclair, 264 U.S. 543, 547-548, 44 S.Ct. 405, 406, 68 L.Ed. 841. (emphasis added)

The criteria for deciding issues of fraud are easily and readily available. An allegation of fraud has volumes of criteria with which any court may work. *Black's*, *supra*, defines fraud at considerable length, at 594-95:

> An intentional perversion of truth for the purpose of inducing another in reliance upon it to part with **some valuable thing belonging to him or to surrender a legal right.** A false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. Any kind of artifice employed by one person to deceive another. Goldstein v. Equitable

and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated. Johnson v. McDonald, 170 Okl. 117, 39 P.2d 150. "Bad faith" and "fraud" are synonymous, and also synonyms of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc.

* * *

[Fraud] consists of some deceitful practice or willful device, resorted to with intent to deprive another of his right, or in some manner to do him an injury. As distinguished from negligence, it is always positive, intentional. It comprises all acts, omissions, and concealments **involving a breach of a legal or equitable duty and resulting in damage to another.** And includes anything calculated to deceive, whether it be a single act or combination of circumstances, whether the suppression of truth or the suggestion of what is false, whether it be by direct falsehood or by innuendo, by speech or by silence, by word of mouth, or by look or gesture.

* * *

Actual or constructive fraud. Fraud is either actual or constructive. Actual fraud consists in deceit, artifice, trick, design, some direct and active operation of the mind; it includes cases of the intentional and successful employment of any cunning, deception, or something said, done, or omitted by a person with the design of perpetrating what he knows to be a cheat or deception. Constructive fraud consists in any act of commission or omission contrary to **legal or equitable duty, trust, or confidence justly reposed, which is contrary to good conscience and operates to the injury of another.** Or, as otherwise defined, it is an act, statement or omission which operates as a virtual fraud on an individual, or which, if generally permitted, would be **prejudicial to the public welfare, and yet may have been unconnected with any selfish or evil design.** Or, **constructive frauds are such acts or contracts as, though not originating in any actual evil design or contrivance to perpetrate a positive fraud or injury upon other persons, are yet, by their tendency to deceive or mislead other persons, or to violate private or public confidence, or to impair or injure the public interests, deemed equally reprehensible with actual fraud.** Constructive fraud consists in **any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or his prejudice, or to the prejudice of *any one claiming under him*;** or, in any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud. (emphasis added)

37 Am.Jur.2d 144, states:

Unquestionably, the concealment of material facts that one is, under the circumstances, bound to disclose may constitute actionable fraud. Indeed, one of the fundamental tenets of the Anglo-American law of fraud is that fraud may be committed by a **suppression of the truth** (suppressio veri) as well as by the suggestion of falsehood (suggestio falsi). **It is, therefore, equally competent for a court to relieve against fraud whether it is committed by suppression of truth—that is, by concealment—or by suggestion of falsehood.**

The chancellors developed the doctrine that disclosure was the duty of one standing in a trust or confidential re- lation to another, and that suppressio veri may be equally as fraudulent as suggestio falsi . . . By statute in

> **Where failure to disclose a material fact is calculated to induce a false belief, the distinction between concealment and affirmative misrepresentation is tenuous. Both are fraudulent. An active concealment has the same force and effect as a representation which is positive in form.** The one acts negatively, the other positively; both are calculated, in different ways, to produce the same result. The former, as well as the latter, is a violation of the principles of good faith. It proceeds from the same motives and is attended with the same consequences . . . (emphasis added)

Title 18 of the United States Code provides further grounds for this Court to take jurisdiction of this issue. The following crimes, for which Knox, his Solicitor and their co-conspirators in the Sixteenth Amendment fraud were easily indictable, are set forth therein:

1. Statements or entries generally, 18 U.S.C. 1001:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry shall be fined not more than $10,000 or imprisoned not more than five years, or both.

2. Acknowledgment of appearance or oath, 18 U.S.C. 1016:

> Whoever, being an officer authorized to administer oaths or to take and certify acknowledgments, knowingly makes any false acknowledgment, certificate, or statement concerning the appearance before him or the taking of an oath or affirmation by any person with respect to any proposal, contract, bond, undertaking, or other matter submitted to, made with, or taken on behalf of the United States or any department or agency thereof, concerning which an oath or affirmation is required by law or lawful regulation, or with respect to the financial standing of any principal, surety, or other party to any such proposal, contract, bond, undertaking, or other instrument, shall be fined not more than $2,000 or imprisoned not more than two years, or both.

3. Government seals wrongfully used and instruments wrongfully sealed, 18 U.S.C. 1017:

> Whoever fraudulently or wrongfully affixes or impresses the seal of any department or agency of the United States, to or upon any certificate, instrument, commission, document, or paper or with knowledge of its fraudulent character, with wrongful or fraudulent intent, uses, buys, procures, sells, or transfers to another any such certificate, instrument, commission, document, or paper, to which or upon which said seal has been so fraudulently affixed or impressed, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

4. Official certificates or writings, 18 U.S.C. 1018:

> Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes or delivers as true such a certificate or writing, containing any state-

or imprisoned not more than one year, or both.

5. Accessory after the fact, 18 U.S.C. 3:

> Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

6. Misprision of felony, 18 U.S.C. 4:

> Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than $500 or imprisoned not more than three years, or both.

7. Conspiracy to commit offense or to defraud United States, 18 U.S.C. 371:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both.

These criminal offenses were in the criminal code in 1913.

The statutory authority for the federal judiciary to examine this issue exists quite apart from any charge of fraud. The Administrative Procedures Act, 5 U.S.C. 701, et. seq., particularly Section 702, permit even discretionary acts of public officials to be reviewed. This act is controlling upon the judiciary. They must, therefore, take jurisdiction of this issue, else they are guilty of a treasonable offense under the jurisdictional doctrine of Chief Justice Marshall quoted in *Young*, *supra*. What the courts do after they take jurisdiction is, of course, another matter entirely, offering another opportunity for them to commit yet another treason.

There are so many more criteria upon which the courts may rightfully take jurisdiction on this issue of the Sixteenth Amendment fraud that it can easily be said the courts may, and must, properly take jurisdiction in this matter.

The Supreme Court has itself previously broken through the political question barrier in *Dillon v. Gloss*, 256 U.S. 368 (1921). In that case, in order to determine an issue as innocuous as the various dates of ratification of each of the States purported to have ratified, the court decided:

> [T]hat it would take judicial notice of the date on which a State ratified a proposed constitutional amendment. Accordingly the Court consulted the State journals to determine the dates on which each house of the legislature of certain States ratified the 18th Amendment. It, therefore, follows that the date on which the governor approved the ratification, or the date on which the secretary of state of a given State certified the ratification, or the date on which the Secretary of State of the United States received a copy of said certificate, or the date on which he proclaimed that the amendment had been ratified are not controlling.

Illinois Constitution Annotated, at 51. If the State legislative journals were consulted by

greater need to take judicial notice of the journals of each and every State. It cannot be that any certification, regardless of its source, can be controlling in this matter until each such journal is inspected for the possibility of additional fraudulent activity. In *Prentis v. Atlantic Coast Line*, 211 U.S. 210, 227 (1908), the Court stated:

> [T]he effect of inquiry, and of the decision upon it, is determined by the nature of the act to which the inquiry and decision lead up. A judge sitting with a jury is not competent to decide issues of fact; but matters of fact that are merely premises to a rule of law he may decide. He may find out for himself, in whatever way seems best, whether a supposed statute ever really was passed.... As the judge is bound to declare the law **he must know or discover the facts that establish the law.** (emphasis added)

Finally, while declining generally to deal with controversies which are wholly political, the United States Supreme Court has excepted those instances in which there are "charges of fraud, corruption or plain mistake"; see *Shoemaker v. United States*, 147 U.S. 282, 305 (1893). There is a charge of fraud in this instance. The political question is inapplicable.

It has been claimed that the process of amending the U.S. Constitution is a federal function. Assuming that some rules must be followed and that there can be no amending of the Supreme Law of the Land without the necessity for rules, those rules must be federal rules. Secretary of State Philander Knox and his Solicitor knew what those rules were and knew that if those rules were not followed by a particular State in ratifying a proposed federal amendment, then they would have to find that State's ratification resolution void, i.e., they would have to consider such a resolution a rejection of the proposed amendment without any further presumption as to the intent of a failure to follow such rules.

It is further evident from Congressional documents that other officials in the federal administrations which followed that of which Knox was a member were actually aware of additional facts which showed that the rules were not followed in the process of the attempt to ratify the Sixteenth Amendment.

Senate Document 240, published in 1931 (see *The Law That Never Was*, Vol. I, at 357-59), shows that, in 1931, federal officials were aware of several failures to ratify the Sixteenth Amendment which had been counted as ratifications. Whether purposefully or not, the decision in *Coleman v. Miller*, 307 U.S. 433 (1939), timely provided enough dicta, since there was no real majority opinion or holding, in that case, to stifle any investigation into the Sixteenth Amendment in its infancy based upon the information recorded in S.D. 240. Under *Hawke v. Smith*, 253 U.S. 219 (1920), however, the ratification process in an individual State had been held to be a federal function. The Solicitor of the Department of State admitted that "[i]f there is any conflict between the State and the United States Constitutions the former must yield"; see *The Law That Never Was*, Vol. I, at 24-25. The following failures to ratify under the mandate in *Hawke* for the requirement of federal legislative rules, according to S.D. 240 (1931) are as follows:

> The federal requirement of a two-thirds majority vote (as Congress is required to pass resolutions proposing Constitutional amendments by two-thirds majority) was not met by at least seven States, including:
>
> a. Georgia
> b. Kansas
> c. Maryland
> d. Mississippi
> e. New Jersey
> f. New York
> g. Vermont
>
> The federal requirement of a record vote, that is, of a vote count, was not

b. California
c. Massachusetts
d. New Hampshire
e. North Carolina
f. Vermont

Because the proper legislative procedure defined by *Hawke* for the ratification of an amendment to the federal Constitution is federal legislative procedure, then, of course, it is a necessary conclusion that each and every State Legislature which did not ratify the Amendment exactly as proposed by Congress actually did not ratify, as opposed to the "necessary presumption" claimed by Knox's Solicitor that each and every State Legislature which made changes to the proposed Amendment actually did ratify. The only proper mode of ratification is the standard of compliance to which the States were, and are, held that is set forth in Document No. 97-120, of the 97th Congress, 1st Session, entitled *How Our Laws Are Made*, Edward F. Willett, Jr. Esq., Law Revision Counsel of the United States House of Representatives, a treatise describing federal legislative requirements of concurrence, which states, at 34, that:

> Each amendment must be inserted in **precisely the proper place** in the bill, **with the spelling and punctuation exactly the same as it was adopted by the House.** Obviously, it is **extremely important** that the Senate receive a copy of the bill in **the precise form in which it passed the House.** (emphasis added)

How Our Laws Are Made, at 45, goes on to explain the stringent rules which apply in federal legislation:

> When the bill has been agreed to in **identical form** by both bodies—either without amendment by the Senate, or by House concurrence in the Senate amendments, or by agreement in both bodies to the conference report—a copy of the bill is enrolled for presentation to the President.
>
> The preparation of the enrolled bill is a painstaking and important task since it must reflect **precisely** the effect of all amendments, either by way of deletion, substitution, or addition, **agreed to by both bodies.** The enrolling clerk . . . must prepare **meticulously** the final form of the bill, as it was agreed to by both Houses, for presentation to the President. . . . each [amendment] must be set out in the enrollment **exactly** as agreed to, and ***all punctuation must be in accord with the action taken.*** (emphasis added)

Agreement in wording and punctuation must be exact in "mere" Congressional acts. Obviously, the requirement to be exact must be every bit as, if not more, stringent with regard to proposed amendments to the Supreme Law of the Land.

John William Burgess, in his work entitled *Political Science and Comparative Constitutional Law*, vol. 1 at 149-50, elaborated upon this principle by stating that:

> [N]o commonwealth may insert any change in the proposition of the Congress nor ratify conditionally. Certainly the insertion of **any change** would be an exceeding of the powers conferred by the constitution of the United States upon the legislatures of the commonwealths in regard to this subject. **The constitution confers upon them only ratifying powers; i.e., it confers upon them no powers of initiation.** (emphasis added)

This is precisely what was admitted by Knox's Solicitor in his Memorandum (*The*

Congress, the function of the legislature consisting **merely in the right to approve or disapprove the proposed amendment.**" The effect of a failure to follow the provisions of the Constitution in the amending process is described in *Boyd v. Olcott*, 202 P. 431, 441 (1921), which stated:

> The Constitution prescribes the method by which it may be amended, and the procedure so prescribed is the measure of the power to amend. The provisions of the Constitution for its own amendment are mandatory and binding, not only upon the Legislative Assembly, but also upon all the people as well; and, consequently, **a failure to observe the mandates of the Constitution is *fatal* to a proposed amendment, even though the electors have with practical unanimity voted for it.** Kadderly v. Portland, 44 Or. 118, 135, 74 Pac. 710, 75 Pac. 222. (emphasis added)

In *Koehler v. Hill*, 14 N.W. 738, 60 Iowa 543, reh. den., 15 N.W. 609 (1883), the issue before the Court concerned a variance in an amendment proposed to the Iowa Constitution. The Court found that the legislative bodies had not concurred in the same proposed amendment, the difference being a few words. There being no concurrence, the Court voided the amendment.

Supporting that contention at the federal level is Report No. 80-89 A 731/77, entitled *Amending The Federal Constitution— Procedures of the General Services Administration and of the State Legislatures*, authored by Michael V. Seitzinger, a Legislative Attorney with the American Law Division of the Congressional Research Service. This report was published on April 18th, 1980, to explain the Congressional requirements on ratification of amendments to the U.S. Constitution. This report states, at 8, that:

> Arguably, two requirements seem to be **legally indispensable** in a **valid** ratification resolution. The first is that the resolution contain **in full the *exact* language** of every section of the proposed amendment as it appears in the enrolled joint resolution proposing the amendment. This requirement is derived from the seeming impropriety of attaching conditions or reservations to the ratification. As a matter of historical fact, some States attempted to impose conditions upon the original ratification of the Constitution, but such leaders as Hamilton and Madison objected that this would be **equivalent to rejection**; as a result, each State accepted the Constitution with no reservations, 'the obligation to adopt the Bill of Rights being wholly moral.' . . . In any event, GSA has *rejected* ratification resolutions containing the language of the proposed amendment in **incorrect or changed form or omitting certain sections.** Precedent for such action seems to have originated when **the ratification resolutions of the states of Kansas and Missouri for the *15th*** Amendment were considered *void* because the second section of the proposed amendment was *inadvertently* left out. (emphasis added)

In other words, failure to ratify in "exact language" is and was, as Knox and his Solicitor knew, to be considered the same as rejection. As illustrated by the voiding of the ratification resolutions of Kansas and Missouri for the Fifteenth Amendment, rejection under the same circumstances in the ratification resolutions for the Sixteenth Amendment for each and every State had historical precedent **prior** to the time that the Sixteenth Amendment ratification process was undertaken. Knox's Solicitor was, without doubt, privy to this same information, yet he conveniently omit-

Fourteenth and Fifteenth Amendment ratification resolutions had somehow created a viable precedent because the courts had made rulings based upon those two amendments. To have a Constitutional amendment before a court is not the same thing as having the acceptance of "errors" in ratification resolutions before a court. As in the Japanese-American internment cases, such information has never properly been before any federal court.

The Seitzinger report shows that even "inadvertent" changes, or, as Knox's Solicitor put it, "errors," must "void" ratifications. These requirements of exactitude between Congress and ratifying State legislatures follow the pronouncement made in *Williams v. United States*, 289 U.S. 553, 572-573 (1932) (quoting *Holmes v. Jennison*, 14 Pet. 540, 570-571), which stated:

> In expounding the Constitution of the United States, every word must have its due force, and appropriate meaning; for it is evident from the whole instrument, that no word was unnecessarily used, or needlessly added. The many discussions which have taken place upon the construction of the Constitution, have proved the correctness of this proposition; and shown the high talent, the caution, and the foresight of the illustrious men who framed it. Every word appears to have been weighed with the utmost deliberation, and its force and effect to have been fully understood.

The Seitzinger report also sets forth a second requirement, *supra*, at 9:

> The second requirement is that the ratification resolution should contain a clear, unequivocal ratification clause. The Office of the General Counsel of GSA will not look behind the ratification resolution as submitted by the State to determine the intent of the State legislature in passing the resolution. Resolutions incorrectly or incompletely setting out the proposed amendment or resolutions not clearly expressing intent to ratify the amendment are likely to suffer rejection by GSA. (emphasis added)

It was incumbent upon Knox and his Solicitor to "not look behind the ratification resolution . . . to determine the intent of the State legislature," yet the Solicitor said that it seemed to be "a necessary **presumption**" that a Legislature ratified by doing something it could not do, in the Solicitor's own words, that is, "alter in any way the amendment proposed by Congress," because, according to the Solicitor, it further had to be "presumed" that any and all changes of wording were "probably inadvertent." It is clear from the Seitzinger report that inadvertence provides no relief to the requirement of exact concurrence in a proposed amendment. Knox could not look behind a ratification resolution to determine intent and was, thereby, bound to consider any change as a rejection. Knox and his Solicitor knew that this was true, but they defrauded the American people by ignoring the known requirements and the known fact, that, by their own count, only four States had "absolutely accurately and correctly" concurred in the proposed amendment (see *The Law That Never Was*, Vol. I, at 10). As the public record shows, the States which Knox's Solicitor claimed had properly ratified—Arizona, New Mexico, North Dakota and Tennessee—also did not ratify. The Tennessee Senate, in fact, did not even vote upon the ratification and there is no record of the ratification resolution transmitted to Knox from Tennessee in any of the official records of the State of Tennessee (see *The Law That Never Was*, Vol. I, at 217).

far, in a pathetic display of cowardice, abstained from correcting the harm done to that organic law. Under the theories being used to protect the current income tax statutes, anything goes when the country sets about to consider an amendment to the supreme law of the land. If the State legislators wish to conspire to commit fraud, these judges have implied that that's okay. If the federal officials charged with overseeing the certification process wish to close their eyes to grossly fraudulent behavior on the part of any State officials, these judges have implied that that's okay. If the federal officials charged with overseeing the certification process choose to knowingly and willfully call the fact of rejection a ratification, these judges have implied that that's okay. However, it is not okay, and each and every one of those judges knows better. Fraud is not a part of the federal function, but, it seems that the history of amendments to the Supreme Law of the Land is filled with corruption and malice.

In *United States v. George House & Marion House*, the prosecutor, Assistant United States Attorney David Brown, had a conference with Bill Benson and counsel for Defendants, Lowell Becraft, prior to a hearing on a motion for reconsideration. In that conference, Brown, after having examined some of the documents which were placed in evidence during that trial, admitted that Secretary of State Philander Knox had committed a crime but then rationalized a continued prosecution of the Houses because over 72 years had passed since the crime had been committed. As a prosecutor, Brown knew that there is no statute of limitations on fraud prior to its discovery and yet he chose to participate in that fraud. Brown even admitted, in that same conference, that this Sixteenth Amendment issue is not a political question and properly belongs in the courts.

The code of ethics by which lawyers are supposed to conduct themselves is very stringent. How then can Assistant U.S. Attorney David Brown justify his attitude toward the behavior of Secretary of State Philander Knox? He knows that Knox and his Solicitor committed a crime, a fraud upon the people of the United States. He believes that the issue is not a political question and that it is properly one for the courts to decide. Yet, what could the courts possibly decide if, as he says, it is too late to do anything about it? Of course, attorney Brown knows precisely what method the law provides for the correction of fraud—to put everything back the way it was. Only in regard to the fact that people who had been greatly affected by this fraud might not still be alive could it be said that certain circumstances could not be put back in their place. And some things would be very difficult to put back, though try we must. But, it is clear that many things could be restored, most importantly, the Constitution and our freedoms.

* * *

The various U.S. Attorneys sent to combat the incriminating public record of the fraud of the Sixteenth Amendment which Bill Benson has uncovered have utilized a red herring in their arsenal. They have argued, and federal district judges have agreed, that the Sixteenth Amendment is constitutional because of its long existence and the reliance which has been placed upon it. However, the constitutionality of the Sixteenth Amendment as supposedly, but fraudulently, ratified is not in question—the issue rather is the nonexistence of the Amendment, not its mere unconstitutionality, because the fraud committed in its ratification totally vitiates that ratification and proclamation of ratification. Thereby, the very existence of the Amendment is vitiated, making the issue of constitutionality moot.

If the basis for a statute, supposedly long in existence, is found to be fraudulent, or

it must stand in spite of the fraud?

In order to answer this question, it is necessary to understand that *stare decisis* is not, like the rule of *res judicata*, a universal, inexorable command, and that it is not inflexible; see Justice Brandeis, dissenting, in *Burnet v. Coronado Oil & Gas Co.*, 285 U. S. 393, 405-06 (1932). Furthermore, courts are not omniscient. The principle commonly referred to as *stare decisis* has never been thought to extend so far as to prevent the courts from correcting their own errors. The Court has a special responsibility where questions of constitutional law are involved to review its decisions from time to time and where compelling reasons present themselves to refuse to follow erroneous precedents; see Justice Black, dissenting, in *Green v. United States*, 356 U.S. 165, 195 (1958). Justice Black also quotes Chief Justice Taney, *ibid*, n. 4, who said:

> I . . . am quite willing that it be regarded hereafter as the law of this court, that its opinion upon the construction of the Constitution is **always open** to discussion when it is supposed to have been founded in error . . . (emphasis added)

In 1938, *Burnet, supra*, was overruled by *Helvering v. Mountain Producers Corp.*, 303 U. S. 376 (1938), and Justice Brandeis' dissent was vindicated. This same liberal principle was set forth by Justice Holmes, dissenting, in *B. & W. Taxi Co. v. B. & Y. Taxi Co.*, 276 U. S. 518, 533 (1927), who stated:

> [I]n my opinion the prevailing doctrine has been accepted upon a subtle fallacy that never has been analyzed. If I am right the fallacy has resulted in an unconstitutional assumption of powers by the Courts of the United States which ***no* lapse of time or respectable array of opinion should make us hesitate to correct.** (emphasis added)

Justice Holmes' principle of review requires reversal, no matter how much time may have passed or how many previous decisions may have been made, when the foundation for a statute or judicial decision is found to be faulty. This principle was used to reverse a decision nearly one hundred years old in *Erie R. R. v. Tompkins*, 304 U. S. 64 (1938) (overruling *Swift v. Tyson*, 16 Pet. 1 (1842)). The *Swift* decision "**pervaded** opinions of [the Supreme] Court involving even state statutes or local law"; see *Vandenbark v. Owens-Illinois Co.*, 311 U.S. 538, 540 (1941). Nevertheless, *Swift* was overturned because it was without foundation.

In *Smith v. Allwright*, 321 U. S. 649, 665 (1943), Justice Holmes' principle was followed, where the it was stated:

> [W]hen convinced of former error, this Court has **never** felt constrained to follow precedent. In constitutional questions, where correction depends upon amendment and not upon legislative action this Court throughout its history has **freely** exercised its power to reexamine the basis of its constitutional decisions. **This has long been accepted practice, and this practice has continued to this day.** This is particularly true when the decision believed erroneous is the application of a constitutional principle rather than an interpretation of the Constitution to extract the principle itself. (emphasis added)

Therefore, any previous applications of the Constitutional principles accruing from a fraudulently ratified Constitutional amendment must fall and they must fall

if, in the determination of a fact, the court has made an error; see *Burnet*, *supra*, at 412 A very grave error in the determination of the existence of the ratification of the Six teenth Amendment was made and has continued to be made to this day.

A fraud is a perversion of the truth, a misrepresentation of fact used to deceive in order to take something away from the victim of the fraud. May it be said that, because of the passage of time, a crime long concealed by the formidable obstacles of time, dis tance and lack of sufficient technology for its revelation can suddenly be declared legal merely because the crime wasn't discovered soon enough? May it be further said that, because the people did not harbor the worst suspicions about their public ser vants, they did not demonstrate due diligence. Clearly, that position is not merely friv olous, but morally reprehensible. In *Prentis v. Atlantic Coast Line*, 211 U.S. 210, 22 (1908), the Court stated:

> It might be said that a citizen has a right to assume that the constitution will be respected, and that the very meaning of our system in giving the last word upon constitutional questions to the courts is that he may rest upon that assumption and is not bound to be continually on the alert against covert or open attacks upon his rights in bodies that cannot finally take them away. **It is a novel ground for denying a man a resort to the courts that he has not used due diligence to prevent a law from being passed.** (emphasis added)

McCloy, the Assistant Secretary of War, had been responsible for the suppression of an Office of Naval Intelligence report, buttressed by F.B.I. investigations. These documents showed that no disloyalty existed in the Japanese-American community, outside of those who had already been apprehended as Japanese agents, contrary to the false and distorted reports which were offered by the Justice Department; see Peter Irons, *Justice at War*, (New York, 1983), at 203, 249. This suppression of evidence led to a conclusion by the high court, based upon erroneous and incomplete information, that the imprisonment without trial (euphemistically called internment) of Americans of Japanese descent was warranted. Justice William O. Douglas admitted, in his last will and testament, that the *Hirabayashi* decision and related cases bothered his conscience into his grave because he had been swayed by the frivolous argument advanced by the Attorney General's staff under the guidance of McCloy; see William O. Douglas, *The Court Years*, (Random House, New York, 1980), at 280. Of course, Justice Douglas' sincerity might easily be questioned; he made no attempt to make restitution for his mistake.

Korematsu was decided in favor of Petitioner in spite of a claim by the U.S. Attorney that the petition was not timely; *Korematsu*, at 1419:

> The government has also failed to rebut petitioner's showing of timeliness. It appears from the record that much of the evidence upon which petitioner bases his motion was not discovered until recently. In fact, until the discovery of the documents relating to the government's brief before the Supreme Court, there was not specific evidence of governmental misconduct available.

This parallels the situation which exists in the case of the documentation which shows the fraud involved in the ratification of the Sixteenth Amendment. Until Bill Benson had finished his research, there was no specific evidence of misconduct available. There is no substantial difference between the lateness-of-the- hour theory advanced by the United States in these Sixteenth Amendment cases and the same theory which Judge Patel justly and courageously chose to overrule. Her reason for ruling in the petitioner's favor was elegantly simple; see *Korematsu*, at 1413:

> Fortunately, there are few instances in our judicial history when courts have been called upon to undo such profound and publicly acknowledged injustice. Such extraordinary instances require extraordinary relief . . .

Judge Patel's courage has recently been buttressed by the United States Court of Appeals for the District of Columbia in *William Hohri, et al., v. United States*, No. 84-5460, decided January 21st, 1986. In *Hohri*, the Court concluded that:

> [T]he Founders provided that the right to obtain just compensation for the taking of one's property should remain inviolate. In so doing, they no doubt assumed that the normal statutes of limitations would apply. But they also most certainly assumed that the leaders of this Republic would act truthfully. In the main, history has proven the Founders correct. We have also learned, however, that extraordinary injustice can provoke extraordinary acts of concealment. Where such concealment is **alleged** it ill behooves the government of a free people to **evade** an honest accounting. (emphasis added)

make a profound and public acknowledgment of the pervasive injustice in our system of taxation, and, yet, given a wonderful opportunity to correct the "utterly unjust" situation, the federal judges, who have been presented with that opportunity, have attempted to pass the buck to Congress and Congress has passed it right back.

While Congress and the courts play word games, shuttling the Sixteenth Amendment hot potato back and forth, the very real impact of the enforcement of the totally disreputable and nonexistent income tax statutes continues to destroy our society. The personal liberty of everyone now is being held hostage and the injustice goes on. The question begging for an answer is, "Does any court have the courage to do what is just for all the present and future generations of families in this country; to prevent further psychological scars upon so many; to rein in the awful abuses of the Internal Revenue Service; to end this utterly unjust system of taxation?" Judge Patel saw what was right and did what was right. In this case, it will take a far greater degree of acuity in the law and a much more extraordinary determination to execute the vision to do what is right; nevertheless, that is the duty of the federal judiciary.

The Internal Revenue Code as it pertains to the income taxation of private individuals cannot stand. It has always been a principle of law that the commission of wrongful acts can never be considered within the scope of duties of a governmental official; see *Hopkins v. Clemson College*, 221 U.S. 636, 644 (1910). The frauds committed in the ratification of the Sixteenth Amendment were not within the scope of duties of those

unlawful enforcement of the wholly non-existent income tax system. Thus far, they have refused to heed our demands. They stand with Judge Leighton in daring the citizenry of this country to take arms against the further abuses of the enforcers of the income tax system. And, we contend they understand exactly what it is they are doing. They understand that it is their duty to obey the Constitution and they have not.

The frivolous and meritless arguments advanced by the U.S. Attorneys in the Sixteenth Amendment cases have been used as dodging maneuvers against Bill Benson's bullet—the clear, unequivocal evidence of fraud in the attempted ratification of the Sixteenth Amendment. Sooner or later, the bullet will take its due.

In *United States v. George House & Marion House*, the prosecutor, Assistant United States Attorney David Brown, had a conference with Bill Benson and counsel for Defendants, Lowell Becraft, prior to a hearing on a motion for reconsideration. In that conference, Brown, after having examined some of the documents which were placed in evidence during that trial, admitted that Secretary of State Philander Knox had committed a crime but then rationalized a continued prosecution of the Houses because over 72 years had passed since the crime had been committed. As a prosecutor, Brown knew that there is no statute of limitations on fraud prior to its discovery and yet he chose to participate in that fraud. Brown even admitted, in that same conference, that this Sixteenth Amendment issue is not a political question and properly belongs in the courts.

It was evident to Assistant U.S. Attorney David Brown that Philander Knox had committed a crime. Brown's admission was unequivocal. That crime consisted of a fraud in his knowing, willful acceptance of ratification resolutions which did not meet the requirements for ratification. Knox and his Solicitor knew that the changes which had been made in the ratification resolutions which did not "absolutely accurately and correctly" quote the amendment were not "errors" because of the process which Knox had followed in order to ensure that such "errors" would not slip through in violation of the exactness requirement.

Knox was required to send a certified copy of the proposed Congressional amendment to Governor of each State. He fulfilled that requirement. All of them received such a copy. The record in the majority of the States showed that their respective governors subsequently transmitted those copies to their legislatures. The requirement of the transmission of a certified copy to each and every State's Governor ensured that each State would have a copy of the exact wording of the proposed amendment. The requirement of the transmission of a certification of the resolution of each State ensured that each State would send the Secretary of State of the United States a copy of the exact wording of the ratification resolution fully checked over for accuracy by an official of the State which sent it. The certification represented a solemn assurance from the State that the ratification resolution had been checked for accuracy, in many instances by both the State's Secretary of State and by its Governor. It is clear from this process actually used in the ratification process that Knox and his Solicitor knew that

virtually any such claim. The Solicitor's deceitful suggestion of a presumption of error in each change had no factual basis, a situation of which the Solicitor and Knox were fully aware. They were not permitted, as has been shown, to make any presumption of "error."

The fraud in the purported Sixteenth Amendment ratification resolutions extended to the certifications from the States. Each resolution sent to Knox was required to be certified, that is, signed. Seitzinger Report 80-89, *supra*, at 2, mentions this requirement as a part of the process and it is so important that it wasn't even necessary to include it in the other two requirements:

> If the proposed amendment is ratified, a **signed** copy of the States resolution effecting ratification, along with the date of adoption by each house of the State legislature, is prepared and certified by the appropriate State certifying official, usually the Secretary of State, and sent to the Administrator of General Services. (emphasis added)

This is, of course, no less than the federal requirement that resolutions be signed by the appropriate leader of each legislative house following passage of any legislation. Very few Sixteenth Amendment ratification resolutions were properly certified via signing in the document actually transmitted to Knox, but Knox rejected no such unsigned ratification resolution. In fact, one of those which was signed was the impressive document sent to Knox as the ratification resolution from the State of Michigan; see *The Law That Never Was*, Vol. I, at 353. The document was apparently one of kind, since there is no record of it in the archives of the State of Michigan; see *id*, at 183.

Knox failed to reject a single ratification resolution in the face of **prima facie** evidence clearly showing a failure to ratify and a failure to comply with statutory notice requirements. The changes made to the ratification resolutions were deliberate and had to be taken to be so on their face. Knox and his Solicitor both knew that. In this regard, the Solicitor's memorandum of February 15th, 1913, is in agreement with the Seitzinger Report that neither the Solicitor, nor Knox, were permitted to look behind the ratification resolution to the intent of any State Legislature. It wouldn't have been a "necessary presumption" on the part of Knox and his Solicitor that each and every State which changed the wording of the proposed amendment in their ratification resolutions did so in "error" unless those two officials, in fact, were going to willfully and knowingly override their known, legal duty to reject such failures to "absolutely accurately and correctly" ratify the amendment exactly as proposed.

The public record in each State shows that the "presumption" of "error" by Knox and his Solicitor is totally and constitutionally unfounded. A primary case is that of Oklahoma; see *The Law That Never Was*, Vol. I, at 61-67. On March 3rd, 1910, the Oklahoma Senate introduced and passed a ratification resolution which had the right wording and punctuation in the body of the amendment. The Oklahoma Senate version read:

> Article 16: The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

ARTICLE 16: The Congress shall have power to lay on collect taxes on incomes, from whatever source derived, and from any census or enumeration.

The Oklahoma Senate did take the opportunity to amend the House version. The amended version read:

ARTICLE 16: The Congress shall have power to lay on collect taxes on incomes, from whatever source derived, without apportionment among the several states, and from any census or enumeration.

Knox's Solicitor, in his memorandum, didn't fully list the "errors" in wording made by the Legislature of the State of Oklahoma. That was because the version transmitted to Washington, D.C., read:

ARTICLE 16: The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several states, and from any census or enumeration.

The Oklahoma Legislature did not pass the version transmitted. Even as transmitted, the Oklahoma resolution cancelled the effect of the proposed amendment by renewing the requirement for income taxation to be controlled by census or enumeration, the very essence of apportionment. As truly passed by the Oklahoma Legislature, the Oklahoma version was obviously complete nonsense. And it was fully approved nonsense. It was not an inadvertent "error." The Oklahoma Senate had already shown that its members knew absolutely what the correct wording was in the body of the proposed amendment. The Oklahoma Senate had the opportunity to fully correct the House version with their knowledge of the correct wording. They didn't. But, someone else took the resolution as passed and falsified it prior to its transmission to Knox, but not sufficiently to result in complete correctness. The Oklahoma ratification resolution was understandably not "signed" to certify its authenticity, but the Oklahoma executive department certified that it was what had passed the Oklahoma Legislature.

It only becomes a matter of determining who it was that falsified the transmitted resolution. There are only two choices. Either the Oklahoma Legislature falsified its resolution or the Oklahoma Secretary of the State falsified its certification. In that the Oklahoma legislative journals seem to be unaltered, the suspicion must fall on the Secretary of State. In either case, the solemn assurance of certification was an outright lie.

The Sixteenth Amendment fraud further consisted of the Solicitor's decision to prevent any investigation into apparent fraud in ratification resolutions received from the States. In a memorandum of the Solicitor dated April 20th, 1911, he dealt with a concern by State Department officials that the Governor of the State of Washington had failed to sign the ratification resolution from his Legislature. One of the Solicitor's stated conclusions was that the Governor of the State of Washington did not need to be contacted because his approval would be moot due to legislative procedure mandated by the constitution of the State of Washington (which the Solicitor consulted), that is, failure to veto within the legislative term was the same as approval (why

unanswered for now).

It needs no expertise to see that the signature of the Governor of the State of Washington on the letter acknowledging receipt of Knox's certified copy, dated August 21st, 1909, is completely different from that on the letter enclosed with the second transmitted copy of the Washington Legislature's ratification resolution, dated March 7th, 1911; see *The Law That Never Was*, Vol. I, at 350-51. A prior letter of transmittal had been sent on February 25th, 1911, but was unsigned. That first letter of transmittal was accompanied by a certificate from the Secretary of State of Washington, signed and dated February 24th, 1911 and by a copy of the ratification resolution said to be signed by the Speaker of the Washington House and by the President of the Washington Senate, but with no signature for the Governor. The second letter of transmittal, seemingly superfluous since Knox's office had made no objection to the first letter, came with the bogus signature and accompanied by another certificate from the Secretary of State. This second certificate contained a different signature (indicated as that of the Secretary of State) than that which was on the certificate accompanying the first letter of transmittal. The second certificate also showed the signature of the Assistant Secretary of State which was unlike either of the other two signatures ostensibly one of which was supposed to be the Secretary of State's signature (see Appendix).

It is no surprise that after having had these documents in hand for over a month's worth of inspection, that the Solicitor decided that the Governor of the State of Washington should not be contacted. In another case in which there had been a question over procedure at the State level, Knox sent a telegram to the Governor of the State of Wyoming after the Governor had, by telegram rather than by certified copy, notified Knox of a purportedly successful ratification (see Appendix). It should have been no problem to also send one to the Governor of Washington. The Solicitor went, instead, to the considerable bother of writing a lengthy memorandum, commenting in detail on the Washington State Constitution, to prevent his underlings from proceeding with a simple investigation into the obvious problems with the transmission from the State of Washington.

In his memorandum of April 20th, 1911, the Solicitor went to great lengths to prevent any of the State Department officials from inquiring of the Governor of the State of Washington about his failure to sign the ratification resolution from the Legislature. In that same memorandum, the Solicitor said that the two-thirds majority required to pass a proposal to amend the United States Constitution put it "beyond the **necessity** for the Presidential approval"; see *The Law That Never Was*, at 24. If it was a "necessity," nothing could skirt that requirement. However, he then went on to say that "the same reasoning does not apply in the case of the Governor of a State because the United States Constitution does not require that the resolution of the State Legislature approving the amendment to the Constitution must receive the required number of votes to pass a bill over the Governor's veto"; *ibid.* The Solicitor, thus, could not have reasonably believed that, insofar as the States were concerned, the Governor was not a part of the legislative process in ratification. If, according to the Solicitor, the federal Constitution did not require a State Legislature to pass its ratification resolution with a vote sufficient to override the Governor's veto, then, the Governor had to be a part of the process at the State level, since the reasoning which made the "neces-

admittedly not been signed by the State Governor and nine of which it was not certain; see *The Law That Never Was*, at 7-9.

We will assume for the moment that Knox and his Solicitor were completely ignorant of the court decisions which were then current bearing upon the legislative power of Governors. Their unanimous decision, however, was that stated in *Weis v. Ashley*, 59 Neb. 494, 81 N.W. 318 (1899):

> The governor is a part of **the lawmaking power**, and, in acting on bills presented to him for approval or rejection, he is engaged in the performance of **a legislative duty enjoined upon him by the constitution**. "To him as well as to the legislature is confided the business of making laws." ... Constitutional provisions similar to the one above quoted have been adopted in many states. The reasons for their adoption are thus stated by Judge Cooley in his work on Constitutional Limitations: "First, to prevent a hodgepodge or 'log-rolling' legislation; second, to prevent surprise or **fraud** upon the legislature by means of provisions in bills of which the titles gave no intimation, and which might therefore be overlooked, and carelessly and unintentionally adopted; And, third, to fairly apprise the people, through such publication of legislative proceedings as is usually made, of the subjects of legislation that are being considered, in order that they may have opportunity of being heard thereon by petition or otherwise, if they shall so desire." Cooley, Const. Lim. (6th Ed.) p. 172.... In People v. Supervisor, supra [16 Mich. 254], Cooley, J., said: " . . . A law must have the concurrence of the **three** branches of the legislative department;... " (emphasis added)

The Governor's signature is *not* a function of the executive, but, rather, that of a third legislative body. Furthermore, when that function is constitutionally mandated (which is the case in virtually every State), no violation of separation of powers may be claimed in the presentation of any legislation to the Governor for his approval or disapproval. For the purpose of this one function, the Governor becomes an integral part of his Legislature; see *State ex rel. Boyd et al. v. Deal*, 24 Fla. 293, 4 So. 899, 906-907 (1888):

> It cannot be said that the governor is no part of the law-making power. He is made a part by an express provision of the constitution,... His participation in the making of laws is expressly provided for as an exception to the general prohibition of the second article of the constitution against any person properly belonging to one department of the government exercising power appertaining to another department.... The purpose of the section of the constitution was to require of the governor careful consideration of every bill before it can become a law, and the exercise of his judgment as a public official as to the wisdom of the proposed legislation, in the light of public interest; and to require an indication of such judgment . . . The authorities speak of the governor as being a component part of the law-making power in the exercise of these functions. *Fowler v. Peirce*, 2 Cal. 165; Cooley, Const. Lim. 184.
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> * * *
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> Chief Justice McWhorter, speaking for the several justices, [*In re Executive Communication Concerning Powers of Legislature*, 23 Fla. 297, 6 So. 925 (1887)] said: . . . "Any duty imposed on the governor with reference to a bill, before it becomes a law, is not an executive duty. The enactment of laws is a legisla-

formed by you as a part of the law-making power, and not as the law-executing power."

This necessary legislative power of a Governor is, of course, common to the executive in any of this country's governmental bodies; see *State ex rel. Main v. Crounse*, 36 Neb. 835, 55 N.W. 246 (1893):

> ... the [executive] officer whose approval is necessary in the first instance, and who has authority to veto any measure which it is proposed to enact into a general or local law, is a part of the lawmaking power. To him, as well as the deliberative body passing the law, is confided the duty of scrutinizing its details, and considering the effect it may have. Particularly is this true as applied to the governor of a state. To him, as well as to the legislature, is confided the business of making laws.

At all times, the opportunity for a Governor to approve or disapprove legislation which has passed both houses of his Legislature (which can only happen upon the presentation of the legislation to the Governor) is necessary to the existence of any act which is to become a law of such a State. When the legislation is presented to the Governor, ultimate approval or disapproval is inevitable, whether he positively acts or whether he does not, since, upon the passage of a certain amount of time (which passage is always constitutionally mandated) his approval is had by a failure to act; see *Stuart v. Chapman*, 104 Me. 17, 70 A. 1069, 1072 (1908):

> The last legislative act is the approval of the Governor. When approved, and not till then, they become existing acts. Palmer v. Hixon, 74 Me. 447.... The approval of the Governor was the last legislative act which breathed the breath of life into these statutes, and made them a part of the laws of the state.

Therefore, unless there was a mitigating constitutional clause in a particular State, all of the various State ratification acts were required to be submitted to the Governors of each of those States; see *In re Opinion of the Justices*, 76 N.H. 601, 81 A. 170, 172 (1911):

> In the absence of evidence of the facts by which, under the Constitution, laws may be enacted without the Governor's approval, his approval, attested by his signature, is as essential to the valid enactment of a law as its passage by each branch of the Legislature.

By the Solicitor's own reasoning, any State act, in attempted ratification of the proposed Sixteenth Amendment, which was not presented to the particular Governor of that State for approval or which was disapproved by that Governor, was void.

* * *

The telegram sent by Knox to the Governor of the State of Wyoming brings up another aspect of Knox's criminal behavior. Though a showing was made in the case of Wyoming to ensure that the statute (Section 205 of the Revised Statutes of the United States) requiring a certified copy of the ratification resolution was followed, neither California nor Minnesota was required by Knox to send certified copies of their ratification resolutions, as is evident from the record in the former case (see *The Law That Never Was*, Vol. I, at 122-23) and as was admitted by the Solicitor in the latter

made. Those two States were counted as having ratified nevertheless.

The situation in Kentucky is one of the most spectacular of the several frauds committed in the ratification process. The Kentucky Senate actually voted **22 to 9 against** the ratification resolution according to the official journal in which the roll call vote was published; see *The Law That Never Was*, at 343-44. For some unknown reason, Knox asked for the journals showing the votes in the Kentucky Legislature. He was sent an extract which paraphrased the official journal and the official journal itself; see *The Law That Never Was*, Vol. I, at 37-38 & Appendix. The extract listed the vote in the Kentucky Senate as **27 to 2 in favor** without the roll call. Despite having the official journal in his possession which showed the overwhelming rejection by the Kentucky Senate, Knox, being bound by the official journal, accepted the ratification of Kentucky per the paraphrased and fraudulent extract.

On December 13th, 1911, the Assistant Secretary of State for the State of Kentucky, by the order of the Governor, sent Knox "certified extracts of the House Journal 1910 and Senate Journal 1910 of the General Assembly" for the Kentucky Legislature. Sent along with those paraphrased extracts were "copies of the Journals of the House and Senate," the official and unparaphrased journals. It's possible that Governor Willson was attempting to warn Knox of the fraud committed, expecting Knox to do his duty and declare the Kentucky ratification void. If Willson had been defrauded himself, through the paraphrased and fraudulent extracts, into thinking that the Kentucky Legislature had ratified and had, for that reason, signed the ratification resolution, there were any number of reasons why he would have expected Knox to bail him out, not the least of which was a reluctance to embarrass himself. He had expressed a reluctance to subject the State to embarrassment in a note sent to the Kentucky Legislature; see *The Law That Never Was*, Vol. I, at 41.

The paraphrased extracts showed that the Kentucky legislators and the Governor understood that leaving parts of the Congressional resolution out of the ratification resolution would void their ratification; see *The Law That Never Was*, Vol. I, at 37-44.

Though Assistant U.S. Attorney David Brown admitted that a crime had been committed by Knox, he persisted in his prosecution of the Houses anyway. What is the duty of the individual, especially a public prosecutor who is required to have a much greater than ordinary interest in justice, who has knowledge that such a crime has been committed? Is it permissible to participate in such a fraud even after the passage of a long period of time, and even though the perpetrator has not been apprehended, tried and convicted and never will be?

The knowledge of the commission of a fraud imputes a duty to report it. 37 Am.Jur.2d 146, states:

> The principle is basic in the law of fraud, as it relates to nondisclosure, that a charge of fraud is maintainable where a party who knows material facts is under a duty, under the circumstances, to speak and disclose his information, but remains silent.

The duty does not end there, however. Participation in the fraud must be avoided whether the perpetrator has been brought to justice or whether he has not. No claim of ignorance of the fraud by closing your eyes to what is obvious can be made. In this

30 (1965), that court stated:

> We know of no case where mere ignorance of the law, standing alone, constitutes any excuse or defense against its enforcement. It would be impossible to administer the law if ignorance of its provisions were a defense thereto. There are cases, undoubtedly, where ignorance of the law, united with **fraudulent conduct on the part of others**, or mistakes of fact relating thereto, will be regarded as a defense, but there must be some element, other than a mere mistake of law, which will afford an excuse. In addition **there ought to be no negligence in *attempting to discover the facts.*** (emphasis added)

If this high standard prevents the ordinary citizen from a claim of ignorance, judges and attorneys absolutely must be prohibited against a claim of ignorance of the law and should, therefore, endeavor that much harder "to discover the facts." The law, in fact, will presume that judges and attorneys know what they are doing and that they will anticipate legal problems; see *United States v. Petito*, 519 F.Supp. 838, 842 (1981).

An ordinary citizen, Bill Benson, attempted to, and, in fact, did, discover the facts. He has laid them out for the world to see. For the most part, the reaction, on the part of the judiciary, the Attorney General and his U.S. Attorneys, the Internal Revenue Service and the media, has been a shameful exercise in hear-no-evil.

However, the hearing on oral argument in the case of *United States v. Leland Stahl*, 85-3069, in the United States Court of Appeals for the Ninth Circuit on February 12th, 1986, has been a most welcome exception to the judicial frost with which the Sixteenth Amendment fraud has been greeted. In that hearing, held in Seattle, Washington, the three-judge panel faced the prosecution's issues head-on with freshness and candor, obvious to all who came to witness and there were many who did. Despite the enormous pressures which those judges may be under to decide the *Stahl* case in favor of the prosecution, they have, thus far, performed admirably.

During Assistant U.S. Attorney Robert L. Zimmerman's turn before the panel, he was asked why he had brought the excise argument. The Ninth Circuit had previously awarded sanctions and double costs against so-called tax protesters for bringing the same arguments in October, 1985. Zimmerman's reply was an astonishing admission. He said that the Attorney General's office felt that if they lost the issue of fraud in the Sixteenth Amendment, they would need something else to fall back on, presumably to justify the tax. The Court then stated that Zimmerman had managed to place two Constitutional questions before them, not just one. Finally, the Court asked Zimmerman whether the United States would be able to present evidence if the Court should order an evidentiary hearing at the district court level. Zimmerman replied that they could; however, the desperation apparent in the tactic of bringing the tax protester's favorite argument of *Brushaber* and the income-tax-as-an-excise does not reflect a great deal of confidence in any "evidence" which Zimmerman could hope to present.

What the actual decision of the Ninth Circuit will be remains to be seen, but we hope for a result in line with the events which occurred in Seattle. We would only wish that our entire federal judiciary would display the same kind of willingness to face the most excruciatingly difficult issues as these Ninth Circuit judges apparently have.

Another gratifyingly out-of-the-ordinary experience in the Sixteenth Amendment battle occurred in Seattle. The *Stahl* hearing drew a crowd of 112 inside the court-

the courtroom. Both major newspaper and television coverage was complete and fairly accurate. The contrast to general media suppression of information about the Sixteenth Amendment fraud was stark.

One of the reasons for the enormous amount of pressure upon the Ninth Circuit was the legal brief submitted by the prosecutor in *Stahl*, Zimmerman, who had, as previously discussed, attempted to advance one of the basic positions which has been argued by the so-called tax protester movement, specifically, that under *Brushaber* the income tax is an excise. The Ninth Circuit was put in the unenviable position of having been handed a loaded gun by Zimmerman with instructions on how to shoot themselves in either the left foot or the right foot. As pointed out by Stahl's attorneys, the Ninth Circuit has previously deemed the *Brushaber* income-tax-as-an-excise position meritless and frivolous and has awarded double costs against the so-called tax protester for bringing that argument before them. We surmise that Zimmerman, as a professional attorney, was aware of the position into which he had placed the Ninth Circuit and they were, also, undoubtedly aware of Zimmerman's knowledge of what he had done and that he had done it with the approval of the Attorney General, Edwin Meese.

Despite their admirable performance at the *Stahl* oral arguments hearings, the Ninth Circuit panel is still faced with the prospect of deciding which of its own feet is less critical. If it rules in favor of Zimmerman's position, it will effectively justify the so-called tax protester position, although Zimmerman did try to distinguish his interpretation of *Brushaber* on the ground that income taxes are an excise only upon a worker's wages. However, if the income tax on a worker's wages were to be considered an excise, in order to conform to the definition of an excise, it would have to be a completely voluntary and avoidable tax. Yet, no one could avoid it because of the necessity to work in order to survive. Therefore, the tax on wages would be involuntary and, so, would be unconstitutional. If the Ninth Circuit rules against Zimmerman's position, it would follow from previous decisions that the Court must award double costs against him for making the argument in order to treat him the same as the other litigants who have made the *Brushaber* argument.

The greatest problem of all, however, was in Zimmerman and, thus, the Attorney General, having taken the *Brushaber* position at all. The tax patriot position now has been given great validity. And it has been given great validity through an argument which the Attorney General should effectively have been estopped, or prevented, from arguing because of his vehement arguments against it whenever so-called tax protesters have brought it into court and because of the Attorney General's own position that income taxes on personal property are direct taxes and, therefore, not excise taxes; see *Stationary Targets*. Above all, that is what has given the Ninth Circuit judges an extremely uncomfortable position in which to be.

In oral arguments in the *House* case in the United States Court of Appeals for the Sixth Circuit, the Court ruled immediately upon the close of the arguments, a very unusual procedure. Essentially, the Sixth Circuit panel agreed with Assistant Attorney General Archer that the Sixteenth Amendment wasn't needed to impose a nonapportioned excise against the ordinary worker's wage. It remains to be seen how the Sixth Circuit will get around the entire history of excises in this country and England which

in Bill's hometown of Chicago. The one major media outlet there which interviewed Bill attempted to discredit Bill by sandwiching his statements between two people who allegedly assaulted federal officials. It is most unfortunate that Bill should have to knock on doors to gain a decent forum for this momentous issue. Those in authority with the opportunity and the means to make the discovery that Bill made, and who have thus far denied this issue its proper forum, are the ones who should have made these discoveries and should be bringing them to light. In *United States v. Dotterweich*, 320 U.S. 277, 285 (1943), the court stated:

> Balancing relative hardships, Congress has preferred to place it upon those who have at least the opportunity of informing themselves of the existence of [hazardous] conditions . . . , rather than to throw the hazard on the innocent public who are wholly helpless.

Although it may be the ultimate responsibility of the people to protect themselves against wicked federal servants, we supposedly have the judiciary and the Attorney General to stand against such abuses. Now that an immense abuse has been revealed, most of the judiciary and the Attorney General appear to have decided to make their stand with the abuse.

It is a fundamental doctrine of constitutional law in this nation that an unconstitutional statute is void, not just from the time that the unconstitutionality is discovered, but from its enactment. This doctrine is stated in 16 Am.Jur.2d 256:

> If a statute is unconstitutional or if its application is unconstitutional, it is in reality not a statute, but is wholly void and ineffective for any purpose since its unconstitutionality dates from its enactment and not merely from the date of a decision upon it.
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> * * *
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> Likewise, it is also stated that an unconstitutional statute confers no duties or rights, creates no office, bestows no powers or authority on anyone and affords no protection to anyone and justifies no acts performed under it. No one is bound to obey it.

In much the same manner as fraud, unconstitutionality vitiates everything that it touches from its very inception. Sovereign immunity cannot be claimed by anyone who knowingly participates in the enforcement of unconstitutional statutes or in a conspiracy to commit fraud. This is true even if reliance was made upon the belief that the statute was constitutional, or the act was not fraudulent. 37 Am.Jur.2d 8 sets forth the rigorous standard applicable in a case of fraud:

> Fraud vitiates every transaction and all contracts. Indeed, the principle is often stated, in broad and sweeping language, that fraud destroys the validity of everything into which it enters, and that it vitiates the most solemn contracts, documents, and **even judgments**. Fraud, as it is sometimes said, vitiates **every** act, which statement embodies a thoroughly sound doctrine when it is properly applied to the subject matter in controversy and to the parties thereto and in a proper forum. (emphasis added)

Furthermore, a party threatened with injury by a fraud is supposed to be completely insulated by the judiciary to the extent that he or she will be returned as much

Am.Jur.2d 30:

> If a person is induced by artifice, fraud or misrepresentation, to come within the jurisdiction of a court for the purpose of obtaining service of process on him, not only will the service be set aside on motion, but also an action for damages may be maintained for the deceit.... Also, it is no defense that the debt which gives rise to the fraudulent enticement for the purpose of bringing suit is justly due, or that the complainant does not plead the enticement as being illegal service or as making the arrest illegal.

Moreover, it is not necessary that those who participate in a conspiracy to commit fraud derive any benefit from the injured party in order to become liable to the injured party. 37 Am.Jur.2d 18 states:

> It is well settled that in order to render one liable for damages in an action of deceit, it is not necessary that he shall have derived any benefit from the deception or have colluded with the person who was so benefitted.

With the great potential for harm in any fraudulent act, David Brown, having admitted the fraud in the nonexistent ratification of the Sixteenth Amendment, still pursued the prosecution of George and Marion House for criminal violations of an income tax code which he knew did not exist. Furthermore, Brown demanded, and got, a vicious sentence of five years in prison for George House and seven years for Marion House from the morally bankrupt Wendell Miles. Marion House received an additional two years for having referred to an I.R.S. agent as a "flunkie." What was David Brown's duty? The duty of all lawyers is a very high duty to the survival of justice. 7 Am.Jur.2d 3 defines the attorney's duties:

> An attorney is more than a mere agent or servant of his client. Within his sphere, he is as independent as a judge; he has duties and obligations to the court as well as to his client, and he has powers entirely different from and superior to those of an ordinary agent. In a limited sense an attorney is a public officer, although it is usually considered that he does not come within the meaning of the term "public officer," "civil officer," or the like, as used in statutory or constitutional provisions. He occupies what may be termed a "quasi-judicial office," since he is, in fact, an officer of the court. Like the court itself, an attorney is an instrument or agency to advance the ends of justice.

Brown's duty extended even further. Lawyers must do their duty to protect and preserve the Constitution of the United States. 7 Am.Jur.2d 4, states:

> The trust and confidence necessarily reposed in an attorney by clients require in the attorney a high standard and appreciation of his duty to his clients, his profession, the courts, and the public. **He has a duty to support the constitutions and laws of the United States** and the states. He must counsel his fellow citizens to use peaceful and lawful methods in seeking justice, and he must refrain from doing an intentional wrong to the adverse party. Above all, an attorney must exhibit good faith and honorable dealing with the court. He must maintain a respectful and courteous attitude toward it, and obey its rules and orders in all matters **not in conflict with the constitution** or laws of the state. (emphasis added)

> [An attorney] violates his oath of office when he resorts to deception or allows his client to do so.

This, of course, is exactly what Knox's Solicitor allowed his client, Secretary of State Philander Knox, to do—participate in a conspiracy to commit fraud. As Knox was also a lawyer and a former Senator who was chairman of the Rules Committee, he understood what he was doing. As Secretary of State, Knox's client was the United States and his fraud, with the aid of his Solicitor, was committed against the whole of the American people. Knox and his Solicitor violated their oaths of office, their lawyers' code of ethics and, most importantly, their duty to the American people to protect them, their Constitution and their Constitutional rights. In David Brown's case, perhaps he ought to read some of this material because he has, also, violated his oath of office, his lawyers' code of ethics and his duty to the American people.

In spite of all the reasons not to proceed with the prosecution of the Houses, David Brown chose the low road, along with Wendell Miles, the road that every judge in Nazi Germany chose. In attorney Joseph Gughemetti's book, *The Taking* (Terra View Publications, San Mateo, California, 1982), he comments, at 133, on the decline of the judicial system in Nazi Germany:

> Historians have concluded that the usurpation of judicial independence in Nazi Germany arose in part as a result of "the degradation of the judge into a mere agent of the state and to his transition to a 'civil servant' rather than a guardian of the rights of the individual and as someone who could be relied upon to interpret the law with a sense of justice." [quoted from *Documents on Nazism, 1919-1945*, New York, the Viking Press, 1945]

Mr. Gughemetti further stated, at 134, as follows:

> It is a matter of international and moral law that no government official may rely upon orders that destroy individual and fundamental rights.... The judiciary must insure that no state goal, regardless of its validity or popular support, can usurp any individual fundamental freedom.

In this case, income taxation in this nation as currently enforced doesn't have validity and certainly doesn't have popular support. The situation relative to income taxation in this country is now painfully close to that which precipitated the Nuremburg trials; see Gughemetti, at 135:

> In the Nuremburg trials that followed World War II the United States imposed an international decree without historic precedent. We affirmed the priority of fundamental human rights and dignity above state goals. We confirmed an understanding that no governmental official could rely upon state goals or national goals to the exclusion of individual fundamental rights. **The principle applied with greatest significance to a judicial system.** Our system was predicated on the belief that the judiciary stood as a buffer between the unfair goals and plans of government and the sanctity of individual rights. The value, however noble, of one could not justify the destruction or usurpation of the other. (emphasis added)

On May 30th, 1985, President Reagan made the following incredible confession in several speeches given around the nation:

personal property of the government, with decent citizens called before the Internal Revenue Service to answer for their income and expenditures and show their papers and their proof in a drama that is as common as it is demeaning . . .

Our federal tax system is . . . utterly impossible, utterly unjust and completely counterproductive. It's earned a rebellion, and it's time we rebelled . . .

In response to these statements, Judge George N. Leighton, in *United States v. David Chapman*, Northern District of Illinois, Eastern Division, 85 CR 44, at sentencing on May 31st, 1985, said:

> As I understand President Reagan's words were [sic] we all should begin taking arms against the Federal Government in the collection of taxes. That is what he saying [sic] to the American people. I am just quoting his words.
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> * * *
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> He says this is now a revolution. Somebody is liable to take him at his word and start one.
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> * * *
>
> I do not mind saying from this bench, I wondered how far this is going to go, to what extent someone is going to really believe there should be a revolution started in this country about the collection of taxes.

Of course, Leighton wasn't quoting the President's words. He was paraphrasing in his own perspective. In fact, the President counseled a "peaceful revolution." But, Leighton is as guilty as every other federal judge in conspiring with the I.R.S. and the U.S. Attorneys to harm all the citizens of this country. And his guilty conscience shows.

The portent of the armed rebellion which Judge Leighton feels that Reagan is encouraging must not come to fulfillment. Armed rebellion leaves a country open to enormous mischief and the very great possibility that an even more repressive regime may take control. Only to those who are presently in power who wish to install a much more repressive system after crushing such an armed rebellion does that possibility merit serious consideration. The best place in which Americans may now have a peaceful resolution of this issue is in the courts, however, the courts do not seem, thus far, to be inclined to provide one, deferring instead to the "political departments." The judiciary must do its duty to be a part of the prevention of any violence by recognizing that the reason our current tax system is so "utterly unjust" is that it was so fraudulently conceived. In *Flast v. Cohen*, 392 U.S. 83, 111-12 (1968) (Douglas, J., concurring), it was stated:

> With the growing complexities of government [the judiciary] is often the one and only place where effective relief can be obtained . . . [W]here wrongs to individuals are done by violation of specific guarantees, it is abdication for courts to close their doors . . . **To wait for a sign from Congress is to allow important constitutional questions to go undecided and personal liberty unprotected.** (emphasis added)

Tragically, it would seem from the word games being played by federal judges that we no longer have a judiciary in this nation which is willing to perform the function of

tax enforcement and who stated on the record that he has no problem with it, is representative of the attitude of the federal judiciary in general. Despite Judge Leighton's belief in the existence of a possibility that an armed rebellion may take place over the abusive income tax system, he does absolutely nothing, cringing in fear under the stern glare of the American Gestapo, the I.R.S., and the American S.S., the U.S. Attorneys. The all-powerful state seems to be using the judiciary to roll over any and all who would show to the state that it is wrong, wrong, wrong and who would make that showing with the state's own documents. We hope that we're wrong in this view of the courts, but the record is grim. As of this writing, we only have the hope that the Ninth Circuit follows through on their performance in the *Stahl* oral argument hearing.

Tyrants do learn from their mistakes, however. The Nazis in this country don't wear uniforms, they wear suits.

The issues which have been discussed in the preceding chapter would never have been raised in any court had the I.R.S. not been guilty of the foulest abuse. In a television broadcast of the CBS series, *Sixty Minutes*, former I.R.S. agent Charles Shefke asserted that "[t]he IRS is probably the most pernicious organization that the federal government, our legislators, have ever created. And if I had to parallel it with any other kind of organization in the world, I would—I would parallel it with the KGB, and probably the Gestapo"; *Pay Up or Else*, *Sixty Minutes*, Volume XIV, Number 7, Sunday, November 15th, 1981. When ordinary middle-class Americans are brought to trial to face criminal tax charges, they are up against the most vicious group of governmental officials this side of the U.S.S.R. and Nazi Germany. Why? Certainly not for the money. The real purpose behind these trials is the creation of fear. In a report entitled, *Streamlining Legal Review of Criminal Tax Cases Would Strengthen Enforcement of Federal Tax Laws*, GGD-81-25 (U.S. G.A.O., Gaithersburg, Maryland, 1981), the American Bar Association made the following comment, at 58-59:

> Tax cases are different from all other types of prosecution in that the criminal enforcement of tax laws is **a delicate, carefully nurtured showpiece** whose principal function is to use the approximately 2,000 annual tax prosecutions to maximum deterrent advantage for the more than 100,000,000 taxpayers who finance government through the voluntary compliance system. The extra-ordinarily high conviction rate in tax cases is well in excess of that in federal criminal cases generally. That rate must be maintained in order to make clear to that large body of taxpayers that tax cheating will be punished; obviously dismissals and acquittals in tax cases have the opposite effect—and that is very harmful to voluntary compliance. The high conviction rate can be sustained only by an extremely careful review of cases by skilled specialists expert in weeding out those cases which involve significant legal and factual weaknesses.
>
> Tax cases are typically more detailed and technical and are less clearly criminal than most other prosecutions under federal criminal law, and no human victim calls for vindication.

Each "carefully nurtured showpiece" has been chosen among many. In other words, many more than 2,000 people are thought to have committed some sort of "income tax crime" but because the chances of conviction are not thought to be superior, many who may be equally "guilty" are not brought to "justice." This is, in large measure, because these so-called "crimes" are "less clearly criminal" than other federal crimes and without "human victim." There are, of course, human victims in these prosecutions—the prosecuted. And those who are prosecuted are, more often than not, the small and meek. One of the reasons Charles Shefke left the I.R.S. was that he,

tively innocent"?

The Law That Never Was, Vol. I, gave every federal prosecutor, federal judge and I.R.S. agent in the country more than enough evidence of the Sixteenth Amendment fraud to warrant a complete cessation of prosecutions and seizures under the income tax statutes. They have, for the most part, absolutely refused. They understand the principles of vitiation under fraud and of the nonexistence of unconstitutional statutes, yet, they persist in enforcing these legally void nonentities. Each such enforcement represents an attack upon the Constitution as it lawfully stands, stripped of the Sixteenth Amendment.

The Nuremberg Principles were set forth in 1946 during the famous Nuremberg trials of Nazi war criminals. These principles were formulated by the International Law Commission in the summer of 1950 and make provision for the following:

Principle I

Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment.

Principle II

The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

Principle III

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible government official does not relieve him from responsibility under international law.

Principle IV

The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.

Principle V

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

Principle VI

The crimes hereinafter set out are punishable as crimes under international law:

a. Crimes against peace:

(i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or

punishment of any of the acts mentioned under (i).

b. War crimes:

> Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment or deportation to slave-labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns, or villages, or devastation not justified by military necessity.

c. Crimes against humanity:

> Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried on in execution of or in connexion [sic] with any crime against peace or any war crime.

Principle VII

> Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.

These principles were drafted upon what was the beginning of the longest continuing worldwide manhunts in history. The newspapers still carry rather sensational accounts of sleuthing for Nazis and of the cornering of Nazi fugitives. Because of their association with the Nazis, the Nuremberg principles are often thought to involve only war crimes in their strictest sense. The principles involve much more. The legal term "war" is far more fluid than the literal term.

War crimes actually fall into three categories:

1. actual armed insurrection;
2. war by construction (that is, aggravated resistance to the execution of law);
3. novel treasons that translate some act of political opposition into the high crime.

These were the English classifications of treason which were accepted in America following the War for Independence; see Bradley Chapin, *The American Law of Treason* (University of Washington Press, Seattle, 1964), at 7. Long before the Nuremberg principles were enunciated, then, the English and the heirs to many of the English traditions, the Americans, believed that levying war against one's own country did not consist merely in taking up arms, but extended to obfuscation of the law. Obviously, such obfuscation of the law would necessarily have to be of a very serious nature to be considered treason.

If judge and prosecutor commit acts in the enforcement of statutes which do not exist, which are, in fact, deadly to the continued well-being of such law that does exist and to the continued well-being of the entire nation, which are, in fact, "utterly unjust," then of what may we say they are guilty?

In the case of *United States v. Jane Ferguson*, IP 84-100-CR, Southern District of Indiana, Indianapolis Division (see Appendix) on January 14-15, 1985, the documentation which formed the basis of *The Law That Never Was*, Vol. I, was introduced for the first time in a federal court. During the course of that trial and the subsequent appellate brief of the United States submitted to the Seventh Circuit, mention was made of Mrs. Ferguson's beliefs that, under *Brushaber v. Union Pacific Railroad Company*, 240 U.S. 1 (1916), the income tax was an excise tax and, therefore, a voluntary tax. Consistent with all the previous arguments of the various U.S. Attorneys around the country against this excise tax position, Mrs. Ferguson's beliefs were characterized as deceitful by Assistant U.S. Attorney Roger Duncan. Duncan also argued that the Sixteenth Amendment fraud was a political issue and that it was too late to consider. *Ferguson*, as of the publishing of this book, is pending before the United States Court of Appeals for the Seventh Circuit as Case No. 85-1688 and is being handled by Lowell H. Becraft, Jr., Attorney for Ferguson in the District Court.

Jane Ferguson was found guilty in a bench trial which ended January 16th, 1985, and the decision handed down February 12th, 1985. The judge in that trial was James E. Noland, Southern District of Indiana, Indianapolis Division, Room 304 U.S. Courthouse, 46 E. Ohio Street, Indianapolis, Indiana 46204; phone 317/269-7461. Noland was originally appointed to his federal judgeship on November 3rd, 1966 by President Lyndon Johnson. Noland was born April 22nd, 1920, La Grange, Missouri. His wife's maiden name was Helen Warvel and their children's names are Kathleen Kimberly, James Ellsworth, Christopher Warvel.

Judge Noland graduated from Indiana University earning his A.B. in 1942. He then earned an M.B.A. in 1943 from Harvard University. Following a stint in the Army from 1943 to 1946, he returned and got his LL.B. in 1948 at which time he was also admitted to the Indiana bar.

Judge Noland practiced in Bloomington, Indiana, from 1948 to 1955. During that period of time he was a Congressman from the 7th District of Indiana from 1949-51, a Deputy Attorney General of Indiana in 1952, a Special Assistant U.S. Attorney General in 1953 and an Indiana State Election Commissioner in 1954. He then became a partner in his law firm, Hilgedad and Noland, in Indianapolis, from 1955 to 1966.

Judge Noland has been a member of the American Bar Association, the Indiana Bar, the Indiana Association of Trial Lawyers and the National Conference of Trial Judges. He belongs to the fraternal organizations, Phi Delta Phi and Phi Kappa Psi. He was the Chairman of the Board of Visitors at the Indiana Law School from 1974 to 1976 and the Secretary of the Indiana Democratic Committee from 1960 to 1966.

Remarks, under the heading of INDIANAPOLIS BANKRUPTCY CASES, by Congressman Charles W. Whalen, Jr., of Ohio.

Noland was implicated in a scam, typical of corrupt federal bankruptcy courts, in which the Chief Judge of the Indianapolis bankruptcy courts, William E. Steckler, was charged with aiding "a select group of Indiana lawyers and politicians [to operate] under the protective shroud of federal courts at Indianapolis, . . . railroading businesses into bankruptcy court, and there plundering [those bankrupt businesses]." Sherman Skolnick, the noted investigator who brought down Otto Kerner, the corrupt federal appeals court judge, and Theodore Isaacs, his financial advisor, linked Indiana Senator Birch E. Bayh, Jr., to the cover- up. Bayh sponsored Noland's appointment to the federal bench.

The source of the charges lay in the fact that Bayh was unwilling to disclose the source of approximately $150,000 in contributions to his election campaign fund in 1968. Those funds, it was charged, came from business trusts which "were illegally forced into bankruptcy proceedings and milked to help finance Bayh's campaign."

The following facts were laid out on the record:

> — In February of the 1968 campaign year, the two trusts were forced into an involuntary bankruptcy reorganization.
>
> —John I. Bradshaw Jr.—who headed a fund-raising effort for Bayh's re-election that year—was appointed by Federal District Court Judge James E. Noland (himself a Bayh-sponsored nominee) to be in charge of the reorganization.
>
> —Since that time nearly four years ago, there has been no credit audit of the trusts' finances and Bradshaw still controls the business.

According to Congressman Whalen's remarks, Bayh estimated his 1968 re-election cost about $800,000. After the election, Bayh was deeply in debt and the Indiana Democratic Party had fared very little better financially. Less than three years later, however, Bayh had become "a serious contender for the 1972 Democratic presidential nomination with a big staff and a big bankroll." The judge in that case was not a regular bankruptcy court judge, but James E. Noland, a district court judge. Accused of conspiring along with Noland and Bayh were the other Indiana Senator R. Vance Hartke, former Indiana Governor Matthew E. Welsh, Chief Judge William E. Steckler and several prominent Indiana attorneys.

The picture of Noland painted in the Congressional record is one of a political hack always willing and able to support his political masters and cronies. Six days after being assigned the subject bankruptcy cases, Judge Noland appointed John I. Bradshaw Jr., a Bayh fund-raiser, as receiver of all the assets of the two trusts. Bradshaw is an Indianapolis attorney and member of the firm of McHale, Cook & Welch. W. Rudolph Steckler, son of the federal district court Chief Judge William E. Steckler, Noland's colleague, is also a member of that firm. One of the partners, Frank M. McHale, was a long-time power in the Indiana Democratic party and a former Democratic National Committeeman, and, not surprisingly, another supporter of Bayh. Bradshaw had been the receiver for seven days when he petitioned Noland to appoint T.A. Moynahan Properties Inc., as property manager for all trust properties and Noland approved. Moynahan was another Bayh supporter.

consistently 50% higher than the recommendations made by the Securities and Exchange Commission. In late October 1969, Joseph Rees, an aide to Bayh, told a Chicago Tribune reporter that George Manuel, who formerly ran the two trusts prior to their forced bankruptcy, was about to be indicted. In less than a week, the prediction came true. Willard Edwards, the Chicago Tribune correspondent, did not get an explanation of how and why a political low-light would have received information about an upcoming criminal indictment. On July 19th, 1969, Manuel's partner, Harry Fawcett, signed a notarized statement which stated that "the bankruptcy racketeers in Indianapolis federal courts have persecuted me, have threatened my life, and have threatened to have me indicted if I don't shut up." Fawcett was also indicted. They were both arraigned on November 24th, 1969, before Chief Judge William E. Steckler. Both Manuel and Fawcett also charged that Robert B. Keene, the Assistant U.S. Attorney, was a part of the conspiracy against them.

Judge Noland was later charged with impropriety by the attorney acting on behalf of Manuel and Fawcett. Noland dismissed an appeal of his own decision, an act completely outside his jurisdiction.

Had Noland been impeached, as he properly should have been, Jane Ferguson's trial might have met a better conclusion, slim as that chance may have been given the general state of the federal bench.

Mrs. Ferguson is a courageous, patriotic woman who showed the kind of determination to hold fast to her beliefs which previously made this country the greatest nation on earth. She works at the Delco-Remy plant in Anderson, Indiana as an inspector. In order to attempt to frighten both Jane, her husband and Jane's co-workers, the Internal Revenue Service, with the full cooperation of U.S. Attorney Tinder and his assistant, Duncan, arrested Jane, a 53-year-old, 140 pound grandmother, during working hours at her plant by putting her in handcuffs and bullying her around. This sort of oppressive tactic, on the part of the Internal Revenue Service, resembles the K.G.B., and is to be expected when our judiciary permits it. And they do permit it.

At her trial, Noland, who is now the Chief Judge of the Southern District of Indiana, Hammond Division, presided while approximately 200 spectators watched Bill Benson, under the direction of Larry Becraft, introduce the documentation which he had gathered from the State Archives of Kentucky, Oklahoma, Georgia, California, Washington and Illinois, as well as what Bill referred to as the Golden Key in *The Law That Never Was*, Vol. I, the Memorandum of the Solicitor to the Secretary of State of the United States. Reading from narratives of each of those States' journals prepared for his testimony and from the Memorandum, Bill had the courtroom in an uproar during his lengthy appearance on the witness stand. Assistant U.S. Attorney Duncan sat quietly throughout most of Bill's testimony, having already conceded that the documents were genuine and uncontestable. Noland had a reputation as a jurist who would brook no outbursts in his courtroom, yet he cautioned the crowd about their behavior only infrequently. Neither Duncan, nor Noland, ever argued against the fact of the fraud presented in the documentation.

The defense strategy was that Jane would forego a trial by jury since the primary issue which was going to be used on her behalf was that of the non-existence of the Sixteenth Amendment to the United States Constitution. It was strictly a legal issue, not

W-4's and W-2's and all the other documentation and witness testimony which are normally used against defendants in criminal tax cases, were admitted by Larry via stipulation. That was done because, if the Sixteenth Amendment was a fraud and, therefore, did not exist, it did not matter one whit if Jane had done any of the things with which she was charged and with which Duncan planned to convict her. It was left strictly up to Noland to perform his duty as a jurist. The fraud was before the court and Noland should have had an easy decision. He took the case under advisement. Noland, having been a prosecutor, understood only too well what the implications of a fraud are and yet, he decided to ignore the fraud committed by Knox and his Solicitor.

In spite of the rectitude of our position and the overwhelming evidence in support of that position, we never expected miracles because any admission by the federal judiciary that the Sixteenth Amendment doesn't exist and never did would be financial suicide. Such an admission would put the entire federal judiciary and much of that of the States in jeopardy since, without the Sixteenth Amendment, the body of income tax statutes in this nation would become null and void and any judge who had ever ruled against a citizen in a matter concerning income taxes would have done so without jurisdiction. Acting without jurisdiction is, in legal theory, the only Achilles' heel of the judiciary. Virtually any other abuse committed while a judge sits on the bench in the performance of judicial duties has been deemed excusable by the judiciary, except flagrantly criminal behavior. Even then, a judge may not be sued for damages, only tried for his crimes. Acting without jurisdiction, however, is a valid cause of action against any judge.

Four weeks later, Judge Noland did the expected—he found Jane Ferguson guilty. In his opinion, Noland set forth two major theories behind which he had chosen to hide: (1) the "political- question" theory, and (2) the "lateness-of-the-hour" theory. Briefly, without mentioning Knox's fraud, Noland proposed that the political-question theory prevented him from making a ruling on the issue because it was a matter for Congress to decide. We called it the "hot-potato" theory. Seeing no available sucker who would take the hot potato off his hands, Noland tossed it in Congress' direction. In Noland's view, Congress is now to be responsible for adjudicating acts of fraud.

Of the many members of Congress to whom we presented this hot potato, none were of the same mind which Noland hoped they would be. A pair of Congressman from the Chicago area, Henry Hyde (R-Illinois) and Martin J. Russo (D-Illinois), turned down Noland's generous potato offer. The poor potato. Nobody seemed to want it. And they still don't.

The "lateness-of-the-hour" theory was Noland's fallback position, that is, even if fraud is a judicial question (and, of course, it is nothing else but), Noland, and others who would later argue the same morally bankrupt position, would have us believe that it's too late to do anything about the Sixteenth Amendment fraud because over seventy years have passed since that fraud was committed. The justification given was that too many people have come to rely upon the income tax system to overturn it at this late date. That claim of reliance is perfectly true. Too many people have come to rely upon the fraud that is the income tax system in this country. Every tax-consuming public servant mainlines on this tax system. The hard-working American has this

Dracula, which supports everything from studies on why pygmies are short to the poor-mouthing and obviously needy oil companies and banks.

If the income tax system were overturned, who would suffer? As in Proposition 13 in California, we would be told that vital services would have to be cut back. That is what the architects of the ruinous federal budget, hogs feeding at the trough, would threaten. That is unmitigated hogwash. One need only make a cursory inspection of J. Peter Grace's lashing of federal waste in *War on Waste*, (McMillan Publishing Company, New York, 1984), to realize that there is more waste and fraud in the federal budget than is taken in via personal income taxes. Grace's Commission found that over the 17 years from 1984 to 2000, $10.5 trillion in savings could be realized if waste of only $424.4 billion was eliminated in the first three years; see Grace, at 3. That's over $617 billion per year. Revenue from personal income taxes is currently running at about $350 billion per year. Including the incredible scam of Federal Reserve interest payments, the need for income taxes of all varieties, personal and corporate, vanishes. Essentially, no one who isn't a thief or an oil company executive or a banker (was that redundant?) would necessarily be hurt if the income tax system in this country were overturned. Even then, income taxes can still be laid, but **under the constitutional requirement of apportionment**. There is no fiscal disaster at stake here, only the admission of a stupendous crime.

The easiest and most expedient interim solution is higher corporate taxes. It is perfectly true that corporations pay no taxes. Taxes laid upon corporations are ultimately passed through to the consumer. And, it has been argued that taxes upon the incomes of businesses tax success. What else should one tax? Failure? Taxes laid upon corporate incomes are excise taxes upon the privilege of operating as a corporation; see *Davis, supra*. That they are passed through to the consumer is of absolutely no import whatsoever, since they are still effectively an excise tax. If a business manufactures hoola hoops and is wildly successful, they have an ability to pay. As long as consumers desire that product, they will buy. That their product is desirable cannot justify a failure to tax that corporation's income. Those products which are luxuries can be further taxed at the time of sale. Those who can afford luxuries have the ability to to taxed. Necessities, of course, are not supposed to have excise taxes levied upon their sale. It is nothing less than coercion to levy taxes upon the sale of ordinary items of food, clothing, shelter, transportation, etc., which are necessary to ordinary existence.

But, the income tax system has favored corporate interests. Personally, we would rather see the little guys in this country bailed out, not the corporate giants. The little guys in this country have been whipped and beaten for taxes, most cruelly in the last forty years, while the heavyweights with federal clout have been treated with kid gloves. An example should suffice. In investigator Robert Sherrill's book, *The Oil Follies* (Anchor Press, New York, 1983), he reports on correspondence from Congressman Bertran Podell (New York) to Wilbur Mills, chairman of the House Ways and Means Committee in 1969:

> Gulf Oil had paid only .81 percent in federal taxes on nearly a billion dollars income the previous year; Mobil paid 3.3 percent; Atlantic Richfield paid 1.2 percent, et cetera—hailed the industry's "passionate devotion to old-fashioned virtues, such as greed," declared that the "oil industry makes

over foot soldiers."

It was further reported that one tax break for the oil industry had allowed that industry to profit to the tune of $140 billion dollars. Now, compare the treatment that the "foot soldiers" administered to Jane Ferguson. Do you get the idea? One of the lawyers involved in the *Pollock* decision, James C. Carter, expressed it very well:

> This is, in general, a one-sided struggle, in which the rich only engage, and . . . in which the poor always go to the wall.

Philip M. Stern, *The Rape of the Taxpayer* (Random House, New York, 1973), at 28.

The kid-glove treatment of the giant corporations has worsened since 1969. The Citizens for Tax Justice recently compiled a list of nearly 40 major corporations which not only did not pay any federal income taxes but were paid income tax rebates by the Internal Revenue Service ranging up to 320.3% on profits ranging up to almost $2 billion. E. F. Hutton received the 320.3% rebate on profits of close to $21 million. American Telephone & Telegraph, one of the world's largest official monopolies with the most massive asset base extant, received a refund of 12.7% on profits of $1,899,800,000, or $241,274,600. And the Internal Revenue Service threatens ordinary citizens with pointed shotguns and puts them in leg-irons for amounts of less than 1/100,000th of such refunds. The courts and the U.S. Attorneys give their approval and aid to such incredibly unequal treatment, hiding behind the legal immorality of the battery of loopholes which favor the corporations and the wealthy.

* * *

The other major problem with the "lateness-of-the-hour" theory is that there is no statute of limitations on fraud until its discovery. Never has been. The simple reason for that is given in the remedy for fraud. Everything which flows from an act of fraud is, under the law, made non-existent. That's a Biblical principle. No act which is unjust, nor its fruits, can be allowed to stand, no matter how much time has passed since its inception. Those who are defrauded must, as nearly as is possible, be put back in the same position they would have been had no fraud been committed and, in all cases, with punitive damages. If that's hard to do, so be it. No one said that achieving justice would be easy. It is easy for the I.R.S., the U.S. Attorneys and the courts to continue with their present criminal behavior, but it's hell on the rest of us.

Noland "allowed" Jane Ferguson to remain free pending her appeal by giving her the option of posting a $10,000 cash bond, meaning she had to put up all $10,000 of the bond, not just 10%. This might have been expected. For Noland to have put Jane in prison immediately, which had become customary since the Bail Reform Act of 1984 had gone into effect, would have been to have harmed her irreparably. You can't get back time lost behind bars. Noland was apparently not willing to put himself in the position of harming Jane if the reality of his acting without jurisdiction was taken into consideration, and it probably was. Noland didn't have the guts to do the right thing but did do that which was expedient for his own hide. He said the fraud of the Sixteenth Amendment ratification was a political question upon which he could not rule, and yet he did rule in finding Jane guilty, saying in passing that justice must be timely. Timely for whom?

Ferguson is now before the Seventh Circuit. Assistant U.S. Attorney Duncan wrote

of-the-hour." Duncan went further in attacking Jane's beliefs that she owed no federal income tax because of its character as an excise tax; see Brief of the United States as Plaintiff- Appellee, at 32-38:

> Appellant is a tax protestor. She states on Government Exhibit 6 that wages are not income. On Government Exhibit 7 she tells the Internal Revenue Service that income tax withheld from her wages was an excise tax and collected "illegally/erroneously." This statement is repeated on several other exhibits.

The assertion of the excise tax argument has been made frequently by so-called tax protesters and the courts have rejected this argument almost as frequently. When they haven't rejected it, they have generally not bothered saying anything about it all.

Duncan then went on to purposefully and willfully skirt the issue of fraud, sneering at the assertion that courts should rule upon an issue of fraud. Of course, Roger didn't dare mention fraud in his brief. He just sneered and changed Jane's legal position. Speak-no-evil. In the U.S. Brief, at 34, it was stated:

> Appellant next argues rather fatuously, that the Sixteenth Amendment to the United States Constitution was not properly ratified, and therefore is not valid. She argues that the ratification process conducted by the various states is subject to review by this Court, and, as authority, relies on many old state cases holding that ratification of amendments to state constitutions are judicial rather than political issues; and, further, that many state courts have voided legislative enactments when differences appear in versions adopted by state Senates and Houses of Representatives.
>
> Prior to trial, appellant filed her Motion to Dismiss which raised the same issue. In her motion, appellant exhibited the Secretary of State's certification as well as a communication dated February 15, 1919 [sic—should be 1913], from the Office of the Solicitor to the Secretary of State. In this document, the Secretary of State is advised to certify to the ratification of the Sixteenth Amendment, and it is the source of appellant's complaint because it appears that this advice was made in spite of the fact that **errors** of punctuation, changes in capitalization, and spelling in the wording of the proposed amendment were made by the ratifying states. . . . These changes, according to appellant, render the Sixteenth Amendment void. However, a brief review of pertinent United States Supreme Court decisions will quickly demonstrate appellant's mistake. (emphasis added)

The "source of appellant's complaint" is not the "fact that errors of punctuation, changes in capitalization, and spelling in the wording of the proposed amendment were made by the ratifying states," rather, the source of Ferguson's complaint is the far more important fact that Knox and his Solicitor **knew** that no such "errors" were made, that the changes in the ratification resolutions were purposeful and willful and that such changes amounted to rejections of the Amendment. But, Duncan deceptively attempted to change the Ferguson position in order to escape the awful consequences of admitting the fraud.

Duncan continued, U.S. Brief, at 35:

> In *Leser v. Garnett*, 258 U.S. 130 (1922), the Supreme Court was presented the question of whether two state ratifications of the Nineteenth Amend-

> The proclamation by the Secretary certified that from official documents on file in the Department of State it appeared that the proposed Amendment was ratified by the legislatures of thirty-six states, and that it 'has become valid to all intents and purposes as a part of the Constitution of the United States'. As the legislatures of Tennessee and West Virginia had power to adopt the resolutions of ratification, official notice to the Secretary, duly authenticated, that they had done so was conclusive upon him, and, being certified to by his proclamation, is conclusive upon the courts. The rule declared in *Field v. Clark*, 143 U.S. 649, 669-673, is applicable here.

As indicated the *Leser* Court relied on *Field v. Clark*, 143 U.S. 649 (1891), which involved a dispute on the authenticity of a bill passed by the United States Congress. The Court held that when a bill has been properly authenticated by the appropriate officials:

> The respect due to coequal and independent departments requires the judicial department to act upon that assurance, and to accept, as having passed Congress, all bills authenticated in the manner stated: leaving the Courts to determine, **when the question properly arises, whether the act, so authenticated, is in uniformity with the Constitution.**

Thus, the United States Supreme Court, with respect to Constitutional Amendments and Congressional legislation, has announced a rule of law that the Courts will not look behind the certificate of governmental officials that an Amendment or bill has been ratified or passed. In *Coleman v. Miller*, 307 U.S. 433 (1939), the Supreme Court held that the efficacy of state ratifications were political questions to be resolved by political institutions, and that there should be no judicial interference with the certification process of the Secretary of State because of the *Leser* holding. *Coleman v. Miller*, p. 450-451. The rules of *Leser*, *Field*, and *Coleman* are the law today, and control the disposition of this appeal.

This conclusion is demonstrated in *Maryland Petition Committee v. Johnson*, 265 F. Supp. 823 (D. Maryland 1967), in which plaintiff argued that the Fourteenth Amendment was void **because of a violation of Article V of the United States Constitution**, and because less than three-fourths of the states ratified it. The District Court granted a motion to dismiss the complaint because of the holding in *Leser*, *supra*, and quoted the language of Justice Brandeis set out earlier in this brief. Recently, in *Dyer v. Blair*, 390 F. Supp. 1291 (D.C.N.D. Ill. 1975), a three judge panel considered the question of whether the Equal Rights Amendment was ratified by the State of Illinois. The Court found that it had not, but, in a footnote at page 1307, stated that it would not set aside a state ratification once certified because of the *Leser* rule.

It is therefore clear from the aforementioned authorities that the Courts will not look behind a Secretary of State's certification of the ratification of an amendment to the United States Constitution, and this Court should apply that rule of law in deciding this appeal.

The proper function of the Court, as stated in *Field v. Clark*, *supra*, is not to look behind official certifications or authentications, but **to decide if an act conforms to the Constitution**, *Field*, p. 462; and with respect to the Sixteenth

has been enforced in countless cases. See *United States v. Scott*, 521 F.2d 1188 (9th Cir. 1975); *United States v. Moore*, 692 F.2d 95 (10th Cir. 1982); *United States v. Porth*, 426 F.2d 519 (10th Cir. 1970). " . . . This contention remains 'farfetched and frivolous.'" *United States v. Stillhammer*, 706 F.2d 1072 (10th Cir. 1983). And see also the cases cited in the argument on appellant's willfulness. Finally, see *Knoblauch v. Commissioner of Internal Revenue*, 749 F.2d 200 (5th Cir. 1984), where the Court, at page 202 (sic):

> We note, moreover, that the Supreme Court first held the Sixteenth Amendment constitutional nearly seventy years ago, *Brushaber v. Union Pacific Railroad Company*, 240 U.S. 1, 36 S.Ct. 236, 60 L.Ed. 493 (1916) and 'recognition of the validity of [that] amendment [has] continue[d] in an unbroken line.'

Other compelling reasons that appellant's argument fails have been recognized by the Courts. In *Maryland Petition Committee v. Johnson*, 265 F. Supp. 823, 826 (D. Maryland 1967), Chief Judge Thomsen discussed what he called "The Lateness of the Hour" of plaintiff's attack on the Fourteenth Amendment. His analysis can be applied in this case. Here, the Sixteenth Amendment has been applied by the United States Courts for nearly three quarters of a century, as was noted of the Fifteenth Amendment in *Leser*, and the Fourteenth in *Maryland Petition Committee*. Age and usage are as Judge Thomsen voted "persuasive indicia of validity."

Roger Duncan could not have gotten into the foregoing exercise in semantics had he admitted the fraud. He shouldn't have been allowed to get into it anyway. Judge Noland should have stopped him. Not surprisingly, Noland played the gutless coward, pretending he didn't notice a fraud sitting on his lap. Finding Jane guilty, he forced the issue into the appellate level where Duncan had the chance to write his brief in praise of looking the other way.

Duncan persisted in ignoring Knox's fraud to the very end, arguing against any inspection of the legislative journals that Bill Benson retrieved from each of the States. Duncan did get to inspect those journals, did see the fraud committed by several parties to the alleged ratification and did proceed to want to deny the courts the opportunity to inspect and see. In the U.S. Brief, at 39, Duncan stated:

> Appellant cites many rather hoary cases in her brief. One not cited, grey with age, but pertinent nonetheless, is *Ex Parte Wren*, 63 Miss. 512 (1886), which was a habeas corpus action, and in which the petitioner asked the Mississippi Supreme Court to look at the legislative history of an enrolled act to determine how the legislature intended the act to read. Chief Justice Campbell declined, and, as was quoted in *Field v. Clark*, 143 U.S. 649, 676 (1891) stated:
>
> > Every other view *subordinates* the legislature and disregards that coequal position in our system of the three departments of government. If the validity of every act published as law is to be tested by examining its history, as shown by the journals of the two houses of the legislature, there will be an amount of litigation, difficult and painful uncertainty appalling in its contemplation, and multiplying a hundredfold the alleged uncertainty of the law. *Ex Parte Wren*, p. 532.

offense would be required in every case to read legislative journals. This procedure is precisely what appellant in this case is asking this Court to do with respect to an Amendment to the United States Constitution. The government submits that chaos would result were appellant's position adopted by this or any other Court, and would respectfully ask this Court to once again sustain the validity of the Sixteenth Amendment.

This last argument is specious in the extreme. All one needs to do in order to disprove the utter frivolity of the theory that "every Justice of the Peace hearing a petty offense would be required in every case to read legislative journals" is to point out that no State, in which the inspection of legislative journals is permitted to determine whether or not any particular legislation was passed in procedurally correct fashion, has had its judiciary unduly disturbed by such litigation. Those who do not permit such inspection run the risk of having a fraud like the Sixteenth Amendment hoax perpetrated upon their statute books. The explanation for allowing inspection was aptly stated in *Rode v. Phelps*, 80 Mich. 598, 45 N.W. 493, 496 (1890):

> We have heretofore uniformly held, in this state, that the courts would take cognizance of the journals of the legislature, and look into them, for the purpose of determining whether the methods of the constitution have been followed in the passage of laws, considering that the safety and permanency of our institutions would be best promoted by such holding. . . . This case exemplifies the wisdom of these decisions. If the rule prevailed here which is adopted in some of the states of the Union, that the courts have no power to go behind the authentication of a law by the presiding officers of the legislature, and the approval of the governor, to ascertain whether or not it was legally passed, under the requirements of the constitution, we should always be in danger of having laws upon our statute-books which, although the courts would be obliged to hold them valid under such a rule, were never passed by the legislature, and were really created by the carelessness or corruption of some member, clerk, or employe of that body, or perhaps by the interpolation of a member of what is sometimes facetiously called the "Third House," but which is nothing more nor less than an organized, and generally *unscrupulous*, lobby. The people speak, in the enactment of laws, through the legislature acting within the limits of the constitution; and any holding which would authorize or permit laws, or any part of any law, to be ordained or created in any other way, would be inconsistent with the logic of our free institutions, and dangerous to the safety and security of the liberties of the people. . . . [M]any of the states which formerly held a different doctrine from that laid down by this court have since, under constitutions similar to ours, which require that all bills shall be passed by yea and nay votes of record, admitted the right and duty of the courts to go behind the official authentication of the law, and inquire into the manner or methods of its adoption, to ascertain whether or not it was properly and legally passed as required by the constitution. (emphasis added)

It would seem that any official, as a servant of the people, would want to use any lawful means at his disposal to prevent a conspiracy of "corruption" from entering quietly and stealthily into the statute books. The colonists did not believe that any man, or any group of men, could be trusted to keep strictly to the straight and narrow path

Mich. 446, 40 N.W. 750, 751-752 (1888):

> Campbell, J., in his opinion, says: "We have certainly the right to look behind the enrollment of a statute for some purposes, in order to determine whether it passed the legislature under the conditions required by the constitution; as, for example, to ascertain what the vote was upon it;" citing *Green v. Graves, supra*. . . . "The courts certainly ought to have the right to open the journals of the legislature to ascertain whether the fraud or mistake of some clerk or employe of the legislature, or its committees, has not imposed upon the statute-books a different law from the one actually passed by the legislature, or to determine whether the requisite number of votes have been given under the constitution to pass a law, when the constitution requires that the yeas and nays shall be entered upon such journals." (emphasis added)

Duncan, following Judge Noland's lead, refused to deal with the overwhelming evidence of fraud and chose instead to utilize limp-wristed arguments intended to evade an honest accounting of the Sixteenth Amendment hoax. His entire argument was based upon passing the buck, or avoiding it altogether. But the artless dodge upon which Judge Noland and Duncan collaborated was going to be the same one used over and over again in the Sixteenth Amendment cases. Each of the judges and prosecutors who used these dishonest and cowardly arguments were and are guilty of aiding and abetting the conspiracy hatched by Knox and his Solicitor to corrupt our Constitution, the Supreme Law of the Land, with fraud.

In a subsequent case, *United States v. Leland Stahl*, District of Montana, Billings Division, Case #CR 85-9-BLG, an attempt was made by the presiding judge, William B. Enright (imported from the District of California, Southern Division) to deny Mr. Stahl an opportunity to present Bill Benson as a witness on his behalf in court (see Appendix). Judge Enright did permit, after the threat of additional legal maneuvers, a written offer of proof (see Appendix).

On appeal in the United States Court of Appeals for the Ninth Circuit as Case No. 85-3069, Assistant U.S. Attorney Robert L. Zimmerman apparently decided, in arguing *Stahl*, that Jane Ferguson's position wasn't as deceitful as Assistant U.S. Attorney Duncan had said it was in his brief submitted to the Seventh Circuit. Zimmerman took the position that the income tax is, indeed, an excise tax under *Brushaber*, making that argument for the purpose of asserting that the Sixteenth Amendment is not really necessary to tax the income of a wage-earner. The Ninth Circuit had previously awarded sanctions against so-called "tax protesters" for making that argument as being "frivolous" and "meritless," in *United States v. Buras*, 633 F.2d 1356 (CCA9 1980) and, again, in *Martindale v. Commissioner*, 688 F.2d 1171 (CCA9 1982). Accordingly, Mr. Stahl, represented by Gerald P. LaFountain, Larry Becraft and Laura Lee, demanded the same sanctions and double costs against the Attorney General for having argued the same "frivolous" and "meritless" position.

Zimmerman claimed that the Sixteenth Amendment was not the basis for the laying of income taxes upon individuals, a position that, as U.S. Attorneys are so fond of saying, flies in the face of every other opinion on that issue. See *Buras, supra*; *Cameron v. I.R.S.*, 54 AFTR 2d 84-6271 (D.Ind. 1984); *Hayward v. Day*, 619 F.2d 716 (CCA8 1980), *cert. den.* 446 U.S. 969 (1980); *Broughton v. United States*, 632 F.2d 706 (CCA8 1980), *cert. den.* 450 U.S. 930 (1981); *Lonsdale v. Commissioner*, 661 F.2d 71 (CCA5 1981); *Parker v. Commissioner*, 724 F.2d 469 (CCA5 1984); and *Jones v. United States*, 551 FSupp. 578 (N.D. N.Y. 1982), to name a few. Zimmerman then reiterated the political question theory and the lateness-of-the-hour position. Finally, Zimmerman argued that no fraud occurred because Knox relied in good faith on the advice of the Solicitor when he decided to proclaim the ratification. Under this theory, if your lawyer gives you justification in legalese to commit a crime, it's okay to commit the crime.

The federal judge presiding in the Stahl trial was William B. Enright who was brought in for the case from his home district, the District of California, Southern Division, U.S. Courthouse, 940 Front Street, Courtroom 3, San Diego, California 92189, phone 618/293-5537. Enright was originally appointed to his federal judgeship on June 30th, 1972, by President Nixon.

During World War II, Enright served in the U.S. Naval Reserve from 1943 to 1946, reaching the rank of ensign. While in the Reserve, he attended Dartmouth College, receiving an A.B. in 1947. He then went to Loyola University in Los Angeles and received his LL.B. in 1950. The following year, he was admitted to the California bar.

Judge Enright started his career as a prosecutor for San Diego County, staying on until 1954. His political preference was Democratic. He went on to the firm of Brown & Von Kalinowski where he practiced until, in 1957, when he formed a partnership in San Diego, named Harelson, Enright, Von Kalinowski & Levitt. Enright's association with that firm lasted 15 years until his appointment to the federal bench.

Judge Enright has membership in the American Bar Association, the San Diego County Bar Association, the State Bar of California, the Dartmouth Club of San Diego, the American Judicature Society, the American College of Trial Lawyers, the American Bar Foundation and the American Board of Trial Advocates. He also belongs to the Alpha Sigma Nu and Phi Delta Phi fraternities and the Rotary Club.

In addition, Enright was on the California Board of Legal Specialization from 1970 to 1972, the advisory board of the Joint Legislature Committee for Revision of the Penal Code during the same period, the prestigious Judicial Council of the United States in 1972 and the board of directors of the Defenders from 1965 to 1972. He has also served as the president of the San Diego County Bar Association in 1965 and the Governor of the State Bar of California from 1967 to 1970 and Vice-president in 1970. He received the Extraordinary Service to the Legal Profession award of the Municipal Court of San Diego Judicial District for 1971. Enright has most recently been called a coward, a traitor and a disgrace to the judicial community and to the country that he is supposed to be serving by Bill Benson in an interview in Virginia.

Montana is "Red" Beckman's home state. Red has been a thorn in the side of the I.R.S. in Montana for a long time, his efforts at educating the public in Montana having been extremely successful. It has become discouraging for U.S. Attorneys in Montana to have to try to get convictions in that district. It may have been embarrassing for the federal judges as well. Was that the reason why William B. Enright, a crusty, arrogant jurist from California was imported for the criminal tax trial of Leland G. Stahl.

Judge Enright refused to allow Bill's documentation and his testimony into evidence at a hearing held April 19th, 1985. His attitude seemed to be that the book, *The Law That Never Was*, Vol. I, was meritless, although he had not personally seen the documentation, nor read the book. Enright was apparently of the hear-no-evil, see-no-evil school of obfuscation. Upon a threatened appeal and motion to censure, Enright backtracked and entered an order allowing Bill to testify in an Offer of Proof submitted in writing to the Court. Enright, having no more moral fiber than had Duncan and Noland, denied the motion to dismiss the charges against Leland Stahl and Leland was subsequently found guilty by a jury on April 24th, 1985. The jury was denied the opportunity, by Enright, either to see Bill's documentation or to hear his testimony. Enright never did permit copies of the documents to be put before him, preferring to avoid having the damning evidence put directly into his hands.

In his Offer of Proof, filed after trial, Bill testified essentially in the same manner as he had previously for Jane Ferguson. In his affidavit, Bill accused the prosecutor, Roger Duncan, and the judge, James Noland, in Jane Ferguson's trial of becoming

high duty to administer justice under the law unaffected by any other considerations. Enright ran from his high duty.

Wendell A. Miles is a federal district judge in the Western District of Michigan, Southern Division. His courthouse is at 482 Federal Building, 110 Michigan Street, N.W. in Grand Rapids, Michigan, 49503, phone—616/456-2314. Miles was originally appointed to federal judgeship on May 9th, 1974, by President Nixon and was named Chief Judge in that district in 1979.

Judge Miles was born April 17th, 1916, in Holland, Michigan. He married Mariette Bruckert and has had three children, Lorraine Miles Rector, Michelle Miles Kopinski and Thomas Paul. Miles served in the U.S. Army from 1942 to 1947 reaching the rank of Captain.

Prior to the war, Miles attended Hope College, in his hometown, receiving an A.B. in 1938. He then went on to the University of Wyoming where he graduated with an M.A. in 1939. Miles went to the University of Michigan to get his Juris Doctor in 1942. That same year he was admitted to the Michigan bar. Miles has also received an LL.B. from his first alma mater, Hope College, in 1980 and from the Detroit College of Law in 1979.

Following the war, Miles immediately went into practice in the family partnership, Miles & Miles, in Holland where he stayed until 1953. During that time, he also served as a prosecuting attorney for Ottawa County. In 1953, he was appointed as the U.S. District Attorney for the Western District of Michigan, staying in that office for eight years. He then left the Department of Justice in 1961, joining the firm of Miles, Mika, Meyers, Beckett & Jones of Grand Rapids, Michigan. That association lasted until 1970 when he became a Circuit Judge in the Twentieth Judicial Circuit of Michigan. After four years on the State bench, he was appointed to the federal bench.

Miles has been a member of the American Bar Association, the Michigan Bar Association, the Federal Bar Association and the Ottawa County Bar Association. He has also belonged to the American Judicature Society, the Rotary Club, the Torch Club and the Masons.

He was an instructor at Hope College for six years from 1948 until 1953, at the American Institute of Banking from 1953 until 1960 and has also been an adjunct professor for American Constitutional History at Hope College in Holland, Michigan.

No matter what else Wendell A. Miles does, the decisions that he made when confronted with the Sixteenth Amendment documentation may erase any good that he has done in his life and will not equal his worst moments. The evidence of the Sixteenth Amendment fraud was put before Judge Miles in *United States v. George House and Marion House*, Case #G85-25 Cr. On March 7th, 1985, the Houses were charged

them because of the Sixteenth Amendment fraud. That motion was denied on April 30th, before Miles looked at any of the evidence.

On May 25th, 1985, in proceedings on a motion, submitted by George and Marion House, for reconsideration of the Sixteenth Amendment issue, the following exchange took place between Bill Benson, David Brown, the Assistant U.S. Attorney prosecuting the Houses, and Wendell Miles, the presiding judge; see Hearing Transcript, at 10:

> BENSON: [W]ith the conference we had with Mr. Brown on Thursday, he said that there was a crime committed on the Sixteenth Amendment in 1913. He said, "But there have been 70 years that have gone by."
>
> BROWN: Objection, your Honor.
>
> MILES: We have some hearsay now on top of the opinions. We're not interested in the statements of the witness as to what somebody told him somewhere, sometime.... I might be very much interested in it personally, but that is not the capacity in which I am presiding here today. Objection is sustained.

Bill's reference was to a conference held on Thursday, May 23rd, 1985, between Bill, Assistant U.S. Attorney Brown and Larry Becraft. The purpose of that conference had been to acquaint Brown with the Sixteenth Amendment documentation and to discuss its ramifications. As Bill testified, during that conference, Brown admitted that Knox had committed a crime in certifying to the ratification of the Sixteenth Amendment. He also admitted that the Sixteenth Amendment fraud was a judicial issue. Brown then tried to neutralize any effect which that admission might have by using the lateness-of-the-hour dodge. Posing a question for which Brown had no answer, Bill asked him how long it takes to legalize a crime, and in what year the Sixteenth Amendment crime became legal. Brown's weakly replied, "I don't care to discuss it any longer."

The specific crimes of which Knox was guilty were several. Title 18 of the United States Code, the federal criminal code, contains the following sections which Knox violated:

Section 1016, Acknowledgment of appearance or oath:

> Whoever, being an officer authorized to administer oaths or to take and certify acknowledgments, knowingly makes any false acknowledgment, certificate, or statement concerning the appearance before him or the taking of an oath or affirmation by any person with respect to any proposal, contract, bond, undertaking, or other matter submitted to, made with, or taken on behalf of the United States or any department or agency thereof, concerning which an oath or affirmation is required by law or lawful regulation, or with respect to the financial standing of any principal, surety, or other party to any such proposal, contract, bond, undertaking, or other instrument, shall be fined not more than $2,000 or imprisoned not more than two years, or both.

Section 1017, Government seals wrongfully used and instruments wrongfully sealed:

> Whoever fraudulently or wrongfully affixes or impresses the seal of any department or agency of the United States, to or upon any certificate,

cures, sells, or transfers to another any such certificate, instrument, commission, document, or paper, to which or upon which said seal has been so fraudulently affixed or impressed, shall be fined not more than $5,000 or imprisoned not more than five years, or both.

Section 1018, Official certificates or writings:

> Whoever, being a public officer or other person authorized by any law of the United States to make or give a certificate or other writing, knowingly makes or delivers as true such a certificate or writing, containing any statement which he knows to be false, in a case where the punishment thereof is not elsewhere expressly provided by law, shall be fined not more than $500 or imprisoned not more than one year, or both.

In self-defense, Brown had objected to Bill's testimony about their conference discussion. And Judge Miles sustained the objection, trying very hard to maintain a plausible deniability of ever having come into contact with Brown's admission by keeping "hearsay" off the record.

Later, during Bill's testimony under Brown's cross- examination in that hearing, Bill spoke, once again, about that conference; see Hearing Transcript, at 66:

> BENSON: [Q]uoting you [David Brown] yesterday, when Judge Nolan (sp) said that it was a political question, and you said absolutely not, it's not a political question, it's a matter of law that belongs in the court.
> [No objection.]

And, *ibid*, at 67:

> BENSON: If ignorance [of the law] is no excuse, if the federal judges, and you as a prosecutor and as an attorney who has to live by a code of ethics, if you—if there is a case, a clear cut case of fraud of a crime that you admitted to was a crime, is brought before you, it's up to you to bring it before the court, and that is what I made every attempt to do, is to bring it before the court.
> [No objection.]

At both of these junctures, Brown made no objection. He had admitted that the political question dodge being used by the judiciary and the prosecutors was an evasion of this issue, an issue which rightly belonged in the courts. He also knew that, as Bill pointed out, any attorney faced with the kind of clear and overwhelming evidence of fraud contained in the Sixteenth Amendment ratification documentation had an equally clear duty to follow his code of ethics and bring it before the court. Having admitted to Knox's commission of a fraud, Brown did nothing to bring the issue before the court. In fact, his every move in the House case was calculated to suppress this information and to continue the prosecution regardless of his admission. And, Miles acquiesced in Brown's every move.

But Miles knew better than to acquiesce in Brown's prosecution, having been an adjunct professor for American Constitutional History at Hope College, besides being an attorney and a judge. He should go back and re-read the Constitution to remind himself that every single word in that great document has meaning and that none can be taken lightly. The apportioning provision for direct taxes was put into the Constitution as one of the great bulwarks of freedom; see *Pollock v. Farmers' Loan &*

In addition to the Constitutional problems involved in the Sixteenth Amendment issue, Miles knew the depth of the fraud which Knox and his Solicitor committed. Nevertheless, he viciously and savagely sentenced George House to five years and Marion House to seven years in federal prisons for their "crimes" while neglecting the issue of the fraud which both he and Brown knew had been committed in the Sixteenth Amendment ratification process and which both he and Brown knew vitiated not only the Sixteenth Amendment but all current income tax statutes as well. Marion House received an additional two years for calling I.R.S. agents "flunkies." Under that method of sentencing, it's probably a safe bet that nearly everyone in the country each should be put into a federal prison for what they have called I.R.S. agents in mixed company.

Those who conspired with Secretary of State Philander Knox tried to do away with the Constitutional apportionment provision by a most heinous fraud—a plot to amend the United States Constitution by artifice and chicanery to the great and everlasting harm of the citizens of this great country, a plot to remove the apportionment protection from American citizens. Such conspirators were nothing less than some of the most fiendish traitors in this country's history.

The treasonous plot executed by Knox and his co-conspirators has not ended, as anyone who has ever seen a 1040 may now become aware. Any attempt by any federal official to enforce statutes which are void because of the unconstitutionality of those statutes is a treasonous offense. It matters very little that those guilty of such treason are oblivious to the fact of their treasonous behavior. The effect is still the same.

Before Bill had taken the witness stand that morning, Miles said that he had "a 50 year proclivity for losing anything that I have in my hands for two minutes." After Bill was finished, Miles admitted the importance of the issue, but insisted that the trial go forward that afternoon anyway. Maybe Miles was afraid of letting the Houses slip out of his hands. He denied the motion to reconsider and proceeded with a bench trial against the Houses the same day and they were found guilty by Miles the same day.

In the movie, *Patton*, there is a scene in which George C. Scott, playing the title role, physically and verbally abuses a young soldier with battle fatigue accusing him of cowardice. Miles must have taken that true-to-life incident to heart. His behavior in sentencing George and Marion House was evocative of that scene.

On July 11th, 1985, at the hearing on sentencing for the Houses, David Brown strode into Miles courtroom waving the July 1985 copy of the Justice Times in which "Red" Beckman, commenting upon the Sixteenth Amendment documentation, had mentioned that no one had been incarcerated to that point after having introduced that documentation into evidence. Waxing hysterical, Brown then demanded that Miles make an example of the Houses in order to put an end to that sort of bad publicity. Miles, apparently now keenly interested in what Brown's opinions were, took the cue, and castigated George House according to Brown's wishes, delivering a tirade. After making a spurious reference to his service in the Army and about his friends who had died in the service, Miles accused George of being disloyal to his country for having failed to serve in the military during World War II, inferring that such a failure was traitorous. Miles contended that George's disloyalty was proven by his refusal to pay his share of taxes. Miles, of course, was quite correct about George's failure to

Brown had been placated. His brand of justice had been done. At Brown's further insistence, they were both denied bail pending appeal, and thrown into prison immediately.

Any halt to further participation in the continuing fraud of federal income taxation might be taken as an implicit admission on the part of either Brown or Miles that their previous participation in prosecutions and trials for federal income tax crimes was, in fact, unwarranted and wholly without jurisdiction. Brown and Miles, along with most other federal prosecutors and judges, have taken a "so-what" attitude, perhaps with the idea in mind that going on as though nothing has happened is the best strategy. Through their continued participation, it seems as though they are going to attempt to hide behind Brown's contention that time heals all frauds. It is, nevertheless, a well-settled doctrine, well-familiar to Brown and Miles, that fraud is a virulent crime which goes on and on, more often than not, creating more and more unjust situations as it is allowed to go on unchecked and uncorrected. That's the reason why there is no statute of limitations for fraud prior to discovery.

Brown and Miles may wish to argue that their actions in putting innocent Americans in prison for so-called tax crimes was done in ignorance. We would like to replay for Brown and Miles every instance in which they uttered the legal caveat—Ignorance of the law is no excuse—to the detriment of those whom they were about to prosecute, to try or to sentence. Brown and Miles have no excuse and must both be sued for damages by those who have been so greatly harmed by their crimes and prosecuted to the fullest extent possible for those crimes, under the doctrine expressed in 37 Am.Jur.2d 30:

> If a person is induced by artifice, fraud or misrepresentation, to come within the jurisdiction of a court for the purpose of obtaining service of process on him, not only will the service be set aside on motion, but also an action for damages may be maintained for the deceit.

The crimes which Brown and Miles have committed because of their continued active participation in the long-standing income tax fraud are the following, also contained in Title 18:

Section 1001, Statements or entries generally:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry shall be fined not more than $10,000 or imprisoned not more than five years, or both . . .

And Section 3, Accessory after the fact:

> Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.
>
> Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maxi-

cipal is punishable by death, the accessory shall be imprisoned not more than ten years.

The problem is Brown and Miles and men like them are the criminals and they're supposed to be the ones to bring criminals to justice. It has become a precarious proposition to even suggest that the foundation for the statutes which the criminal justice system has been using to send people off to prison and to take their private property was completely illusory. The suggestion alone has brought about some rather severe reactions from prosecutors and judges who understand jurisdictional defects as well as anyone. They understand what must be done to a patriotic couple like the Houses who would dare to challenge their prosecutorial and judicial underpinnings in federal income tax cases. Do unto others before they do unto you.

The Houses were depicted as dastardly criminals. Upon conviction, a great show was made of the necessity for destroying their liberty. And yet, even though an admission was made that one of their own high federal officials committed an infinitely more vicious, traitorous and wide-ranging crime—a successful attack on the United States Constitution—absolutely nothing was done. This is, however, the manner in which bully-boy United States Attorneys and cooperative judges without moral courage operate consistently and without fail.

An example of what happens to the high and mighty when they commit real and serious offenses against the United States illustrates the enormous injustice done to the Houses.

In 1979, Iran experienced an Islamic revolution which toppled the Shah's CIA-backed regime. The success of that revolution was due in large measure to the boycott of Iranian oil imposed by the major oil companies with the recommendation of John McCloy, David Rockefeller's favorite lawyer and cover-up artist. Iran's economy had been suffering from that boycott and when the Khomeini forces took over, they cancelled the long- standing agreement between Iran and the major oil companies. The obvious next step was that Khomeini's finance ministers would pull Iran's enormous assets out of the Chase Manhattan Bank, the Shah's piggy bank of preference. The Shah was, after all, a good buddy of David Rockefeller. The Shah, however, was suffering from terminal cancer and any influence which he still maintained in Iran would be lost upon his death.

The law firm of Milbank, Tweed, Hadley & McCloy, Wall Street's most well-connected law firm, was commissioned to formulate a legal theory to enable Chase to freeze the Iranian assets and forestall the dreaded, potentially ruinous Iranian withdrawal. If you never heard that story in the national media, perhaps it's because it isn't exactly news that the law firm of a former Chairman of the Board of Chase Manhattan Bank, John McCloy, was hired by Chase Manhattan to do a job. David Rockefeller, Henry Kissinger and McCloy descended upon President Carter, applying extreme political pressure to convince Jimmy that his best hope for a future in this life was to permit the poor, suffering, dying Shah to enter the country for medical treatment. The Shah's entry into the United States was, of course, the key to McCloy's "legal" theory of the seizure of the Iranian assets held in Chase. The State Department and the CIA had previously informed Carter that if the Shah were allowed to come into this country, the U.S. embassy in Teheran would be seized by the rabidly anti-American

portant hostages; Milbank, Tweed, Hadley & McCloy's client, Chase Manhattan, gets to seize the Iranian money. Did our honorable, crime-fighting Justice Department, the United States Attorneys even flinch? You know the answer to that one, dear reader. So do 52 victimized Iranian embassy employees who spent 444 days holed up in Iran in order that David Rockefeller's flagship wouldn't get its plug pulled; see Mark Hulbert, *Interlock* (Richardson & Snyder, New York, 1982), at 116- 18.

The various United States Attorneys around this great land like to give the impression that they are protecting the interests of the citizens of this country. There's not too much question about which particular citizens' interests they spend 100% of their time protecting. There is a discretionary privilege to prosecute which is the peculiar monopolistic province of the United States Attorneys. If your name is Rockefeller, Kissinger, or McCloy, "advance to go" and collect 200 billion dollars. If your name is George and Marion House, "go directly to jail."

The traitors, David Brown and Wendell Miles, are aware of their treasonous behavior. They have decided to join in the conspiracy against the American people. They have consciously made the decision to aid and abet the continuing, ongoing fraud and conspiracy against the sovereign people of the United States. They have done so despite their joint recognition of the criminal fraud which Philander Knox committed in the conspiracy to unlawfully amend the United States Constitution which conspiracy ran from 1909 to 1913. There is no statute of limitation on fraud prior to its discovery. Both Brown and Miles know that. And, as Bill reminded both of them, ignorance of the law is no excuse. That is so much more true of those who are lawyers and judges. Therefore, it is clear and unequivocal that Brown and Miles have committed several crimes themselves as explained above. It can be said without argument that upon the discovery of a fraud, two duties present themselves. One, the fraud must be reported to higher authorities. Two, participation in the fraud must be avoided at all costs. But, no benefit need arise for a particular party for that party to be guilty of fraud. 37 Am.Jur.2d 18, states:

> It is well settled that in order to render one liable for damages in an action of deceit, it is not necessary that he shall have derived any benefit from the deception or have colluded with the person who was so benefitted.

It is unknown at this point whether either Brown or Miles have reported Knox's crime to a higher authority. A failure to do so would be a violation of Title 18, United States Code, Section 4, Misprision of felony:

> Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States,conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than $500 or imprisoned not more than three years, or both.

Brown and Miles have, however, failed to stop participating in the fraud, even in the face of their recognition of the crime. Of course, both Brown and Miles have a vested interest in seeing that the fraudulent status quo of federal income taxation is maintained. In fact, Mr. Brown, in his conference with Bill, argued that because over 70 years had passed since the commission of Knox's crime, the status of federal income

sion of City of New York, 397 U.S. 664, 678 (1970):

> It is obviously correct that no one acquires a vested or protected right in violation of the Constitution by long use, even when that span of time covers our entire national existence and indeed predates it.

The vested interest of both Brown and Miles stems from their willing and eager participation in past prosecutions and trials for federal income tax crimes, throughout their respective careers as prosecutor and judge. Absent the provisions of the Sixteenth Amendment excusing Congress from laying direct taxes only by apportionment, their actions in these cases have been completely without jurisdiction, in other words, they had absolutely no justification in law to prosecute or try anybody for the violation of so-called income tax violations.

Even after being informed of the jurisdictional defect inherent in their actions, they proceeded anyway. Their crime is well stated by Justice Tucker in the Appendix (preface) to the 1803 Edition of *Blackstone's Law Commentaries*, at 18:

> [I]f in a limited government the public functionaries exceed the limits which the constitution prescribes to their powers, every such act is an act of usurpation in the government, and, as such, treason against the sovereignty of the people, which is thus endeavored to be subverted, and transferred to the usurpers. (emphasis added)

Judge Miles has willfully imprisoned the Houses despite his sure and certain knowledge of the Sixteenth Amendment fraud. He has knowingly usurped authority. He is a complete disgrace to his black robes and the judicial system. He is a coward and a traitor.

* * *

An interesting note may be made to the *House* case. The appeal brief submitted in *House* was answered but not in a brief written by David Brown, the prosecutor in the trial court, which is usual and normal. The brief was fully approved by Assistant Attorney General Glenn L. Archer, Jr. who generally handles civil tax cases. Efforts to contact David Brown since the sentencing of the Houses have been unsuccessful. Several inquiries to the Justice Department in Washington, D. C. have yielded responses to the effect that David Brown does not work at the Justice Department any longer. Where, oh, where, is David Brown?

James T. Moody is a federal district judge in the Northern District of Indiana, Hammond Division, having been originally appointed to his federal judgeship on February 24, 1982, by President Reagan. Moody's courtroom is located at 128 Federal Building, Hammond, Indiana, 46320. Moody's telephone number is 219/932-5500, ext. 294.

Judge Moody was born on June 16th, 1938, in La Center, Kentucky. His wife's name is Kay Gillett Moody and he has four children. He attended Purdue University from 1956 to 1957 and then transferred to Indiana University where he received his A.B. in 1960 and then his LL.B. in 1963. He was admitted to the Indiana bar that same year.

Judge Moody became a trust officer at the Bank of Indiana immediately after getting his license. The following year, he entered into his own law practice in Hobart, Indiana, which continued until 1972. During the same period, Moody served as the City Attorney for East Gary, Indiana, from 1966 to 1970. During the same period, Moody also served as the City Attorney for Hobart, Indiana, from 1964 to 1973, despite the possibility for conflicts of interest which may have arisen between the two cities. During the latter part of his service to Hobart, Moody was also sitting as a judge on the Superior Court of Lake County, Indiana, in another potentially questionable position, from 1972 until 1979. He was then appointed U.S. Magistrate for the Northern District of Indiana in 1979 being raised to a federal judgeship in the U.S. District Court for the same district in 1982.

Those of you who have read *The Law That Never Was*, Vol. I, are familiar with James T. Moody. Unfortunately, there are those, like Allen Lee Buchta, who are much too familiar with Moody, having been on the receiving end of his special brand of "justice."

Allen was found guilty of two counts of willful failure to file in a jury trial which ended June 30th, 1983. This was the historic case in which the Sixteenth Amendment material gathered by the Montana Historians was presented and rejected by Moody as uncertified, which thus denied Allen the opportunity of having the Sixteenth Amendment evidence presented on his behalf because of a technicality. It was that technicality which served as the gall which burned in Bill Benson's mouth, prodding him to press forward with his Sixteenth Amendment research. Allen Buchta's case went up on appeal to the United States Court of Appeals for the Seventh Circuit, and was decided against Allen in June, 1984.

If you recall, Moody presided at the trial of Mr. Buchta in June of 1983, showing a flagrant disregard for the truth. At that particular trial, "Red" Beckman introduced the documentation, researched by the Montana Historians, concerning the ratifica-

Nixon with regard to information on the Watergate tapes, Moody attempted to stonewall what that Sixteenth Amendment documentation introduced in his courtroom had made evident—that there were severe problems with the ratification process of the Sixteenth Amendment. Moody rejected the documentation with the lame excuse that it was uncertified, that it was not notarized and that there was no witness available to directly testify to its authenticity. Nevertheless, the truth was there to see. The documentation consisted of photocopies from the journals of several State Legislatures. It wasn't as if the documents had been transcribed in crayon. Moody apparently believed, like some kind of hear-no-evil, see-no-evil primate, that the truth could somehow be eliminated by plugging his ears and tightly shutting his eyes.

In the Watergate scandal, those who were most prominent in the effort to stonewall the truth were not those who were the most guilty. Nixon and his "plumbers" were nothing more than front men for the more powerful people behind the scenes, like Henry Kissinger and Nelson Rockefeller, who were really responsible for the Watergate shenanigans. Likewise, the federal judges, relative to the much more shocking scandal of the fraudulent ratification of the Sixteenth Amendment to the United States Constitution, are acting as a team of cover-up artists for those who were really responsible. To what end? Perhaps, it's a belief that our system could not stand the shock of the truth. That belief is simply a dodge, a means of avoiding the urgently needed purging of a horrendous cancer from our body politic. In *Graham v. Jones*, 3 So.2d 761, 793-94, 198 La. 507 (1941), the Louisiana Supreme Court declared an amendment to the State Constitution void, saying:

> It is said that chaos and confusion in the governmental affairs of the State will result from the Court's action in declaring the proposed constitutional amendment void. This statement is grossly and manifestly inaccurate. If confusion and chaos should ensue, it will not be due to the action of the Court but will be the result of the failure of the drafters of the joint resolution to observe, follow and obey the plain essential provisions of the Constitution. Furthermore, to say that, unless the Court disregards its sworn duty to enforce the Constitution, chaos and confusion will result, is an inherently **weak** argument in favor of the alleged constitutionality of the proposed amendment. It is obvious that, if the Court were to countenance the violations of the sacramental provisions of the Constitution, those who would thereafter desire to violate it and disregard its clear mandatory provisions would resort to the scheme of involving and confusing the affairs of the State and then simply tell the Court that it was **powerless** to exercise one of its primary functions by rendering the proper decree to make the Constitution effective. (emphasis added)

Implicit in the position taken by the judiciary in this Sixteenth Amendment issue is that dishonesty must prevail because the cost would be too great if the truth were to prevail. Our nation is in its death throes if our judiciary has that attitude. The cost is too great for the truth not to prevail.

The intentions of evil, dishonest and cowardly men must be thwarted and that can only be accomplished by using the truth as the ultimate weapon. Allen Lee Buchta was a casualty. He was unjustly found guilty and sentenced to six months and forty-two months probation by Moody. In addition, Allen was also ordered to submit income tax

unwanted and unfair", and, worst of all, "utterly unjust". Certainly, if that description could be applied to anything else, the federal judiciary may have been wise enough and courageous enough to stanch the draining of justice from our nation's lifeblood, long before any President had a chance to make such a statement. Moody is one of the many reasons why the income tax system has developed into such a monster of abusive, criminal behavior. When the judges commit crimes themselves in the enforcement of an abusive tax system, what else could be expected? Moody refused to return the uncertified copies of the Sixteenth Amendment documents which had been submitted to him during Allen's trial, apparently doing so in the childish belief that, by keeping them in his possession, he could prevent the truth in those papers from going any further than his chambers. That attitude was not only foolish, but incriminating. At that point, Moody became a part of the conspiracy to commit fraud initiated 70 years previous in violation of Title 18, Section 1001, Statements or entries generally:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry shall be fined not more than $10,000 or imprisoned not more than five years, or both . . .

And Title 18, Section 3, Accessory after the fact:

> Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.
>
> Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by death, the accessory shall be imprisoned not more than ten years.

It may be easy enough to blame the Internal Revenue Service and its agents, or the United States Attorneys, for their critical roles in the wholly unjust taxation of income in this land, yet, above all, it has been the federal judiciary which has ultimately allowed the carnage of lost lives, either literally or spiritually, and the outright theft of the private property of innocent millions of American citizens by the Internal Revenue Service. The judiciary could have been the great protector of our freedoms, but they failed and they failed miserably. They became the great protectors, instead, of the great men of power who have impressed, and continue to impress, their will upon the willingly impressionable Congress.

In the case of *United States v. Ronald Matheson*, the Central District of California, Case No. CR 84-290 Kn, Mr. Matheson entered the Benson documents in evidence under a Post-trial Motion. The judge who presided over Ron's trial was David V. Kenyon, U.S. Courthouse, 312 N. Spring Street, Los Angeles, California, 90012, phone 2136886169. Kenyon was originally appointed to the federal bench on September 30, 1980, by President Carter, as part of the flurry of appointments which Carter made near the end of his term in the midst of the Iranian hostage crisis debacle.

Judge Kenyon was born September 10th, 1930, in San Marino, California and married Mary Cramer. They've had two children.

From 1952 to 1954, Kenyon served in the U.S. Marines, after graduating from the University of California with his B.A. in 1952. Following his time in the Marines, Kenyon attended the University of Sourthern California where he received his LL.B. in 1957. He was admitted to the California bar the next year. His first experience came as a law clerk in a U.S. District Court from 1957 to 1958. From there, Kenyon joined Harned, Pettus & Hoose for two years. He then was employed in a series of corporate positions with Metro-Goldwyn-Mayer, 1959 to 1960, National Theaters & Television, Inc., 1960 to 1961, Keith Ferguson Co., Inc., 1961, and Mydland & Pic'l., 1961 to 1962.

In 1962, he formed a partnership, Kenyon & Barnard. The following year, he went into private practice. The next year, he entered into another partnership—Everhard, Call & Kenyon—with which he was involved for five years, until in 1969, when he returned to private law practice. Two years later, he became a judge in a California municipal court in 1971. Then, in 1972, he was elevated to a judgeship on the Superior Court of California where he stayed until his appointment to the federal district court.

Before introducing the Sixteenth Amendment fraud as an issue before Judge Kenyon, Mr. Matheson had already gone through the federal judicial gauntlet, having been tried and convicted in Kenyon's court of four counts of willful failure to file income tax returns, having appealed and lost in the appellate court, having petitioned for rehearing and been denied such petition in the appellate court and having petitioned for a Writ of Certiorari and been denied such petition in the U.S. Supreme Court. In his ruling of October 16th, 1985, on that evidence, Kenyon asserted that:

> [O]nly **material** alterations in the language of the Amendment can render the ratifications of these states ineffective. *Pollard v. Wisconsin State Board of Examiners*, 177 N.W. 910 (1920); *Foster v. Naftalin*, 74 N.W.2d 249 (1956).
>
> The Court finds that the alterations in language made by 37 of the 38 ratifying states, excepting Kentucky, do not constitute material changes. The **alterations** made in these states—for example, changing the word "lay" to

> fications of these states are effective and the Sixteenth Amendment is a valid part of our Constitution. Any errors which the Secretary of State may have made in the process of officially certifying the adoption of the Amendment cannot invalidate the ratifications or compromise the legal effect of the Amendment today. (emphasis added)

David Kenyon made at least four grievous errors in this order. First, Kenyon utilizes two State cases to justify his contention that changes in the ratification resolutions in the process of amending the federal Constitution must be "material." *Hawke v. Smith*, 253 U.S. 219 (1920), asserts that the ratification process is a federal function. If Kenyon wishes to oppose that assertion and to engage the aid of the decisions of the various State judiciaries, then the constitutions of each of those states must also be taken into consideration and the accompanying constitutional violations committed at the State level. Furthermore, neither of these two cases have anything to do with changes made to the wording in a Congressional resolution proposing an amendment to the federal Constitution. *Pollard* involved changes made to a bill prior to its approval by the Governor of the State of Wisconsin (at 912), while *Foster* involved a clerical mistake in the submission of a bill to the Governor of the State of Minnesota (at 253). Obviously, neither was close to the point which Kenyon attempted to justify in this order.

Second, Kenyon freely admitted that "alterations" were made by all 38 States which Knox proclaimed as having ratified. Under the Constitution, as Knox's Solicitor announced in his Memorandum, the State legislatures were not permitted to change the proposed Amendment "in any way." The use of the word "alterations" admits to the rejection by 38 States of the Sixteenth Amendment.

Third, Kenyon's statement that "[a]ny **errors** which the Secretary of State may have made in the process of officially certifying the adoption of the Amendment cannot invalidate the ratifications or compromise the legal effect of the Amendment today" is correct, but misleading. This is another of the many word games played by men like Kenyon. Knox did not make any "errors"; what Knox and his Solicitor did was willfully and knowingly done, not by error or mistake. Of course, one of the cases used by Kenyon, *Foster*, did involve a clerical error which invalidated a Minnesota State statute. Clearly, Kenyon had a severe case of muddled thinking when he wrote this order.

Fourth, Kenyon excepted Kentucky from those States which he considered as not having made material changes. Why? It's nearly impossible to tell because Kenyon makes no clarifying statement as to his reason for excepting Kentucky. The "alterations" made by the State of Kentucky were certainly not the worst of all the alterations which were made. One comma was deleted and the word "source" was changed to "sources"; see *The Law That Never Was*, Vol. I, at 44. There were many states with more numerous and more radical changes to the Congressional resolution. Either the ratification resolutions from those States are materially altered as was Kentucky's, or Kentucky is no exception. As stated by Secretary of State Philander Knox's Solicitor in his memorandum of February 15th, 1913; see *The Law That Never Was*, Vol. I, at 19:

> [U]nder the provisions of the Constitution a legislature is not authorized to alter **in any way** the amendment proposed by Congress, the function of the legislature consisting **merely** in the right to approve or disapprove the

Naturally, in the mind of the Solicitor, had nothing to do with changes in the amendment. In the mind of the Solicitor, **NO** alterations were authorized. Knox's Solicitor went on to deceitfully pose an exception to his own constitutional rule on ratification. The Solicitor's memorandum, *ibid*, stated:

> It, therefore, seems a **necessary presumption**, in the absence of an express stipulation to the contrary, that a legislature did not intend to do something that it had not the power to do, but rather that it intended to do something it had the power to do, namely, where its action had been affirmative, to ratify the amendment proposed by Congress. Moreover, it could not be **presumed** that by a mere change of wording **probably inadvertent**, the legislature had intended to reject the amendment as proposed by Congress where all parts of the resolution other than those merely reciting the proposed amendment had set forth an affirmative action by the legislature. (emphasis added)

This cleverly worded "presumption" was employed by Zimmerman in *Stahl* to argue that the changes made in the Sixteenth Amendment ratification resolutions were harmless. The Solicitor's "presumption" was similarly used by Judge Wendell Miles in *United States v. George House & Marion House*, G85-25 Cr., Western District of Michigan, Southern Division, to justify a denial of the Houses Motion for Reconsideration.

The Solicitor knew that what he had suggested in his memorandum was deceptive. Knox, as a high-powered lawyer with clients like Andrew Carnegie and the Vanderbilts and as a former Senator who had served on the powerful Senate Rules Committee, Zimmerman, as a prosecutor, and Miles, as a judge, were not ignorant of the law. Presumptions cannot be used to "escape from constitutional restrictions"; see *Bailey v. Alabama*, 219 U.S. 219, 239 (1911). Nor can presumptions substitute for evidence. The Solicitor and Knox knew what the restrictions were and conjured up a presumption to escape from them. The Solicitor said that the States were not permitted to "alter [the amendment] in any way," yet, he permitted them to alter the amendment by his presumption of error. The Solicitor, in posing his presumption and Knox in agreeing to that presumption, perverted the sound principle which declares void, not acceptable, any act which governmental officials are prohibited from doing. In *Virginia Coupon Cases*, 114 U.S. 270, 288 (1884), the Court stated:

> A defendant sued as a wrong-doer, who seeks to substitute the State in his place, or to justify by the authority of the State, or to defend on the ground that the State has adopted his act and exonerated him, cannot rest on the bare assertion of his defence. He is bound to establish it.... [The act of January 26, 1882] is a **legislative act** of the government of Virginia, but it is not a law of the State of Virginia. The State has passed no such law, for it cannot; and what it cannot do, it certainly, in contemplation of law, **has not done**. (emphasis added)

Clearly, the Solicitor could not accept anything which he had admitted that the States could not do. He, and Knox, were bound to reject as void what the States could not do. The States were bound to "establish" by prima facie evidence the only thing that they could do—"approve or disapprove"—by the Solicitor's own words. Just as clearly, David Kenyon, Assistant U.S. Attorney Zimmerman and Wendell Miles, as

established was that only four of the States ratified.

Perhaps, Kenyon had the stupendous fraud in the case of the State of Kentucky weighing heavily on his mind when he wrote this bit of nonsense. Perhaps, David was agonizing over the enormous burden of having to acknowledge that fraud in his court, grasping at a way to say it without saying it. In any event, I have no pity for David Kenyon. He was as disgusting a coward and traitor as any other judge who has ruled upon the Sixteenth Amendment fraud.

For his failure to act with moral courage, David Kenyon must also be numbered among those who have chosen to acquiesce in the ongoing fraud of the income tax and who have, in so doing, become criminals by participating in that fraud. At a minimum, Kenyon's crimes consist of the following from Title 18 of the United States Code:

Section 1001, Statements or entries generally:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry shall be fined not more than $10,000 or imprisoned not more than five years, or both . . .

And Section 3, Accessory after the fact:

> Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.
>
> Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by death, the accessory shall be imprisoned not more than ten years.

Thomas R. McMillen sits as a judge in the Northern District of Illinois, Eastern Division, U.S. Courthouse, 219 S. Dearborn St., Chicago, Illinois, 60604, phone 312/435-5620. He was originally appointed to federal judgeship on April 23rd, 1971.

Judge McMillen was born June 8th, 1916, in Decatur, Illinois. He married Anne Ford and his children were Margot McMillen Roberson, Patricia R. McMillen, and Anne C. McMillen. He is a Congregationalist and a Republican. He served in the U.S. Army during World War II, winning 4 Battle Stars, a Bronze Star, and a Croix de Guerre.

McMillen was sent to the Hotchkiss School in Lakeville, Connecticut, where he graduated high school in 1934. He went on to Princeton University, attaining an A.B. (summa cum laude) in 1938, to Harvard Law School, for his LL.B. in 1941 and before going into the Army was admitted to the Illinois bar.

Upon his return to the United States, McMillen joined the firm of Bell, Boyd, Lloyd, Haddad & Burns, where he stayed until achieving Partner status in 1951 and through 1966. He then became a judge on the Illinois Circuit Court for Cook County from 1966 to 1971. Finally, McMillen was appointed by President Nixon to the federal bench in 1971.

McMillen has been a member of the American Bar Association and the Chicago Bar Association, and belongs to the Phi Beta Kappa fraternity, the Law Club and the Legal Club of Chicago.

McMillen was apparently quite a scholar, winning the prestigious Ames Competition at the Harvard Law School, and being selected as a Rhodes Scholar from Illinois in 1939 (did not attend due to WW II). McMillen has also been active in charitable and community-oriented organizations. For twenty years from 1949-1969, he served as the director and officer of the Chicago Maternity Center, for nine years from 1960 to 1968, as director and officer, North Shore Association for the Retarded, as the director and an officer of the New Trier Township Citizens League, as a trustee of the Winnetka Congregational Church from 1970 to 1972 and, finally, as chairman of the Winnetka Caucus Committee in 1957. He was the chairman of the Appeals Board of the Illinois Law Enforcement Commission from 1968 through 1970, on the panel of arbitrators for the American Arbitration Association and U.S. Conciliation and Mediation Service from 1968 until 1971, a member of the board of managers for the Chicago Bar Association from 1964 until 1966.

As a judge in Cook County, Thomas McMillen's association with the Cook County political machine marked his early career, whether he would ever be willing to admit it. Political clout was unchallengeable and an absolute prerequisite to holding virtu-

1974), he reports the following comments of a pair of Chicago lawyers, at 119:

> One veteran practitioner, a man in his sixties who divided his life between government and corporate practice, offered a biting (and convincing) summation: "We've had the kind of federal bench we deserved. This district does not have the kind of bar that is interested in the federal bench. The lawyers, even the ones with the big corporations, were satisfied to rock along with a bad judiciary because they were satisfied with the quasi- dictatorial style of government The Machine provides. Chicago has decided to put its fate in the hands of one man, a decision joined in by the Democratic machine and even the Tribune. The bar is spineless. The corporate attorneys were comfortable with the situation as it existed. This amounts to the surrender of an important legal responsibility, for you can't have good administration of justice without good judges."
>
> "The Machine," of course, is the Democratic political organization headed by Mayor Richard J. Daley. During the Kennedy-Johnson years Daley personally approved every Chicago federal judge—for, as one politically active lawyer states, "The Machine long depended upon a subservient bench to dominate Chicago. The state courts, of course, are complete **toadies.** When that situation occurs elsewhere, you can find relief in the federal courts. Not so in Chicago. You go to court, and even today you may be up against someone who was put on the bench by The Machine for the express purpose of perpetuating The Machine in power. This is a rotten situation. Cases can be decided purely for political reasons, not on the basis of justice. Now let's be specific on one point: this is a bad situation regardless of whether you think Daley is a good boss or a bad boss. Why? **The courts are getting away from the law. They exist as tools for suppressing political dissidents, not radicals or revolutionaries, but anyone who disagrees with The Machine.**" (emphasis added)

Yet another lawyer reported that after two months of practicing before the federal bench in Chicago, his opinion was that, as a group they "were either sick, fixed, or dumb."

With all that going against him, McMillen managed to win the early approval of many of the lawyers who argued cases before him, although a judge perhaps might not want to win the approval of a group of lawyers who are "sick, fixed, or dumb." In a study released in 1972, McMillen was rated favorably by 67.33 percent and unfavorably by only 7.43 percent, good enough to rank him fifth of the thirteen judges in that district in "favorable" ranking and third in "unfavorable" ranking. He was also, at that time, considered one of the four judges in the district worthy of promotion; see Goulden, at 117.

Unfortunately, McMillen reverted to Chicago form somewhere along the line. He was voted worst judge in the Seventh Circuit in 1983 by the lawyers who have practiced in his courtroom, according to the July/August 1983 issue of the American Lawyer. Their comment was that McMillen was "a man given to the unpredictable and the unintelligible." They went on to say that "[l]awyers who have practiced before McMillen fault him for not understanding issues in complex cases; **for showing bias in criminal rulings**; for issuing unclear rulings; and for being generally unprepared. And McMillen knows it." In the Chicago Tribune column, *On The Law*, of February 14, 1984, the following was reported:

week and, alluding to her crime, declared, "$40,000 is a lot of money. That's more than most of these people out here make in a year."

Well, it just so happened that the "people out here" were attorneys in the Milwaukee Road bankruptcy, including former Gov. Richard Ogilvie. Presumably, some spend $40,000 a year on club fees. One whispered to another, "That's probably the collective billing for this afternoon." Then Albert Jenner walked in. He bills at $275 an hour. Yes, judge, $40,000 is a lot, but Jenner hauls it in every three weeks.

According to Robert Bennett, a consultant and Northwestern Law School professor, "political" judges are frequently "not smart enough to handle intricate, challenging cases," and that they are likely to suffer from "[d]eficiencies in intellect and judgement, and just plain legal competence . . . "; see *Goulden*, at 121. After over a decade on the bench, Thomas McMillen lost the bright promise of his law school accomplishments and of his initial performance on the federal bench, lapsing into unpredictable, unintelligible incompetence. However, instead of becoming like the "toadies" in the Illinois State judiciary who kowtowed to the Chicago Democratic machine, McMillen became a toady to the big federal machine. His demeanor shifted from one which had found early favor in the lawyers who knew him to one which was as politically biased as any other in Chicago. Professor Bennett described the behavior well:

> The judge will sometimes have the courtesy of going through the motions of a 'fair trial' and pretend he is listening to you. But you were dead from the moment the case was assigned.

See Goulden, at 119.

So it was with Kenneth L. Thomas who was found guilty of willful failure to file federal income tax returns in a jury trial which ended January 18th, 1985, in which Bill's Sixteenth Amendment material was presented following the jury's verdict but prior to sentencing.

In Kenny's case, McMillen displayed his talent for filling his courtroom with a fog of confusion. Kenny was set for sentencing on April 1st, 1985, but on July 8th, 1985, Andy Spiegel, Kenny's attorney, argued a motion to stay the execution of judgement pending appeal in which the issue of the Sixteenth Amendment fraud was presented to McMillen. The prosecutor, Assistant U.S. Attorney L. Felipe Sanchez, was pushing for Kenny's immediate incarceration. Like James Noland with Janie Ferguson in Indiana, McMillen didn't want to put Kenny in prison right away, however, McMillen's reason was that he thought Kenny was entitled to appeal on the basis of the Speedy Trial Act. The transcript of proceedings of July 8th, 1985, at 6-7, shows the following:

> Judge Nolan (sic) apparently thought [the Sixteenth Amendment documentation] was a substantial enough issue to grant bond. If a case is up there under those circumstances, I think it would be a little unfair to the defendant to incarcerate him while the Seventh Circuit is in the process of deciding what Judge Nolan (sic), at least, thought was a substantial issue. I personally do not think it is substantial. But there is another problem in the case which I think the defendant probably is entitled to appeal on, which is the Speedy Trial Act question. I don't believe that is raised in the motion but it probably will be raised on appeal.

session for over 19 weeks. During that time, the entire record was unavailable for public inspection. McMillen then proceeded to imagine that an appealable error might be hiding in his decision somewhere; see transcript, at 8:

> As you notice in my own decision, although I found against the defendant, we had three different computations and I imagine that the Court of Appeals can come up with a fourth one.

Sanchez argued that no matter how the time under the Speedy Trial Act was computed, it would still be well within the guidelines of that act. Nevertheless, McMillen granted Andy's motion for a stay as long as Kenny could post a secured bond in the amount of $24,000.

On July 29th, Andy argued a motion to modify the order of the 8th because Kenny was having difficulty coming up with the bond. During the hearing on the 29th, once again, the substantiality of issues on appeal came up for discussion and, once again, McMillen showed his iron grasp on the situation; see transcript of the proceedings on July 29th, at 9-10:

> I don't think your Sixteenth Amendment issue is a substantial one but you had another issue in there—I can't remember what it is right now—... that I thought was, perhaps, substantial.

So substantial that he couldn't, perhaps, remember what it was.

Thereafter, Andy ran into McMillen in a restaurant near the federal building and had a conversation in which McMillen asked him whether he believed that the issue of the Sixteenth Amendment would be heard by the Supreme Court. Why would McMillen ask such a question if he believed that the Sixteenth Amendment issue was not substantial? Obviously, the thought troubled him. For the 19 weeks that McMillen had kept the entire record of Kenny's trial in his chambers, had he been poring over that record during that period of time in order to make sure that he had an iron grasp on the issues? The answer to that question is "unintelligible."

Immediately after his expectedly bizarre decision in Kenny Thomas' case, McMillen opted for retirement. McMillen is now on senior status in the Northern District of Illinois. The pasture must have looked like a good place to which he might escape. The Thomas case is on appeal to United States Court of Appeals for the Seventh Circuit.

McMillen's courtroom demeanor may seem to have been surrealistic, but it has been only too realistic for those who have been sent to prison and who have lost their homes and other property when he has previously unlawfully taken jurisdiction over their federal income tax cases, both civil and criminal. McMillen's retirement was probably based as much upon a sense of the handwriting on the wall for all federal judges who have unlawfully taken jurisdiction over federal income tax cases as it may have been upon his age. Retirement was an easy way to play "hear-no-evil, speak-no-evil" with the Sixteenth Amendment fraud. Retirement or resignation has been the most common route taken by federal judges who start to feel the heat. It matters little, however, even for someone who is so universally disrespected by his fellow lawyers. Ignorance of the law is no excuse, even if ignorance has been practiced as a way of life. It has been for the sake of revenue collection that consistent I.R.S. abuses were over-

be excused. With knowledge of that fraud, the continued support of I.R.S. enforcement of the personal income tax statutes is completely criminal and treasonous. McMillen, like all other judges who have failed to cease and desist in the face of the Sixteenth Amendment fraud, is guilty, at minimum, of violating Title 18, United States Code, Section 3, Accessory after the fact:

> Whoever, knowing that an offense against the United States has been committed, receives, relieves, comforts or assists the offender in order to hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.
>
> Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by death, the accessory shall be imprisoned not more than ten years.

Noting McMillen's propensity for mentally nodding off, he has likely also violated Section 4, Misprision of felony:

> Whoever, having knowledge of the actual commission of a felony cognizable by a court of the United States, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority under the United States, shall be fined not more than $500 or imprisoned not more than three years, or both.

It might be suggested that the humane thing to do in McMillen's case would be to permit him to live out the rest of his days without rancor. Unfortunately, Gerrit Tibboel comes to my mind. Gerrit is 64-year-old gentleman who was convicted in 1984 for willful failure to file his tax returns. Gerrit Tibboel was sentenced to one year in prison. McMillen must be brought to bear for his treasonous behavior in no less harsh a fashion.

Charles P. Kocoras sits on the federal bench for the Northern District of Illinois, Eastern Division in the U.S. Courthouse at the Dirksen Federal Building, 219 S. Dearborn Street, Chicago, Illinois, 60604, phone 312/435-6872. He was originally appointed to his federal judgeship on September 30th, 1980 in the closing days of President Carter's collapsing administration.

Judge Kocoras was born on June 25th, 1938, in Chicago. He is married to Grace L. Finlay and has three children, Peter, John, and Paul. Kocoras is Greek Orthodox.

Kocoras attended Wilson Junior College from 1956 to 1958 and then went on to DePaul University where he received a B.S. in 1961. Upon graduation, Kocoras joined the Internal Revenue Service becoming a revenue agent and, later, a district conferee. Kocoras left the I.R.S. in 1967 to return to the DePaul College of Law, earning a Juris Doctor in 1969 as valedictorian of his class. He was admitted to the Illinois bar that same year.

Kocoras became an associate with Bishop & Crawford, staying there from 1969 until 1971 when he was recruited to be an Assistant U.S. Attorney for the Northern District of Illinois by U.S. Attorney James B. Thompson, now Governor of the State of Illinois. Kocoras was a federal prosecutor from 1971 until 1977. During the same period of time, he taught as an adjunct professor at the John Marshall Law School from 1975 to 1982.

Kocoras served as chairman for the Illinois Commerce Commission from 1977 to 1979. After he left the I.C.C., he joined the firm of Stone, McGuire, Benjamin & Kocoras in Chicago as a partner from 1979 to 1980.

Kocoras has been a member of the Hellenic Bar Association, the Chicago Bar Association, the Federal Bar Association and the Illinois Bar Association. He also belongs to the Beta Alpha Psi fraternity. His other positions have included the Judicial Screening Committee, Investigation Division of the Chicago Bar Association and member of the Seventh Circuit Committee to revise criminal jury instructions.

Kocoras, as an Assistant U.S. Attorney, became acquainted not only with Daniel K. Webb, who became the U.S. Attorney for the Northern District of Illinois when Thompson resigned, but also with Anton Valukas, the current U.S. Attorney for that same district. Kocoras has maintained a close personal relationship with Mr. Webb ever since his days in Thompson's office. During the course of the Operation Greylord trials, even though Kocoras was presiding over the trial of one of the Greylord defendants, he continued to see Webb, the prosecutor in that case, all during the time the trial was ongoing. So much for Mr. Kocoras' independence from one of the chief litigants in his courtroom. As a judge, Kocoras is supposed to avoid even the appear-

independence from one of the chief instigators of litigation in his courtroom. Not surprisingly, Charles Kocoras has a reputation for being hard-nosed in federal income tax cases, reserving his hard-nose for those who would dare defy the all-powerful I.R.S. He also had a reputation for being very careful and meticulous in his courtroom. Mustn't expose the glint of your hard-nose.

Kocoras was to preside over the trial of William Van Dyken, charged with two counts of willful failure to file income tax returns. Andrew B. Spiegel, Bill's attorney, persuaded his client to forego a jury trial as did Janie Ferguson. In a bench trial, the judge must not only perform the duties of the judge, but also the duties of the jury, and may, thus, be voir dired, or interrogated as to possible prejudices, as would any potential jury member. Kocoras was asked about his previous employment with the I.R.S. and he acknowledged that he had been employed by the I.R.S. Andy then made a motion of recusal to Kocoras, that is, Andy asked Kocoras to remove himself from the case because of personal bias in favor of one of the litigants. Kocoras refused. No surprise. Thereafter, Andy filed a motion to dismiss the case based upon the Sixteenth Amendment material which was presented to Kocoras. Kocoras denied that motion. Again, no surprise. The hard-nose was still hard.

The trial began, and the first witness for the prosecution was a hard-nosed I.R.S. veteran of twenty years, Agent Kenneth Hejca. The careful, meticulous Judge Kocoras greeted Agent Hejca like a long-lost brother, announcing loudly on the record in open court that he used to work with Agent Hejca. Oops. Upon that "oops," Andy moved for recusal again. Kocoras granted that motion. No surprise. Hard-noses still have rear-ends which need tender, loving covering.

Charles Kocoras was eminently well-qualified to recognize a criminal fraud when he saw one. He has had broad experience as a trial attorney and as a federal judge. He has lectured as a law school professor. It could only be said that he must have recognized that Philander Knox and his Solicitor committed a gross fraud. The inexplicably careless, fatal "error" committed by Kocoras in saluting an old working buddy from the I.R.S. can certainly be interpreted as a thinly-disguised attempt on his part to be recused and, thereby, duck the issue of fraud presented to him.

No judge should be allowed to duck this issue with such a decoy. It was, and is, Kocoras' duty to confront the issue like a man. If he does not when squarely confronted with it, he is guilty of the same federal crimes from Title 18 of the United States Code that all the other federal judges have committed in their rulings and nonrulings on the Sixteenth Amendment fraud:

Section 1001, Statements or entries generally:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry shall be fined not more than $10,000 or imprisoned not more than five years, or both . . .

And Section 3, Accessory after the fact:

hinder or prevent his apprehension, trial or punishment, is an accessory after the fact.

Except as otherwise expressly provided by any Act of Congress, an accessory after the fact shall be imprisoned not more than one-half the maximum term of imprisonment or fined not more than one-half the maximum fine prescribed for the punishment of the principal, or both; or if the principal is punishable by death, the accessory shall be imprisoned not more than ten years.

When Kocoras stepped down in the Van Dyken case, he asked Bill (with whom he was acquainted from his days as a federal prosecutor) whether he was going to take the Sixteenth Amendment material and talk about it to the American people. Bill's response was, "That's absolutely correct, Charlie."

Bill Van Dyken's case was transferred to another judge, James B. Moran. It was in Moran's court that Bill was convicted in a bench trial on July 25th, 1985. In an unusually light sentence, Van Dyken was given three months work release with no probation, no fines, no requirement to pay back taxes and no requirement to file back income tax returns.

The Law That Never Was, Vol. I, demonstrated that historical research is far more than just leafing through dusty, old books. Digging up historical facts and presenting them in a coherent form can reveal some amazing stories. The story of the Sixteenth Amendment fraud must inevitably bring down the current income tax system like a house of cards. The abusive tactics which have been employed in enforcing the income tax have been shown to be without legal and lawful foundation. The fear of harm and the actual harm which the vast majority of Americans have suffered during the Reign of Terror of the income tax have been based upon a mirage, an hallucination of history. There is no Sixteenth Amendment.

The battle cry of the American War for Independence was "No more taxation without representation." After that battle cry became a victory shout, the founding fathers tried to set it in constitutional concrete with one, single word. Apportionment. *The Law That Never Was*, Vol. I, shows that it's still there, unmoved by the connivance of Philander Knox. President Reagan probably has more purchased copies of Volume I than any other person in this country. If he's serious about his "second American Revolution" against the "utterly unjust" federal income taxes, then all he needs to do is shackle his executive agencies, the Department of Justice and the Treasury Department, with the rule of apportionment.

The more recent suppression of wrongdoing on the part of President Nixon in Watergate should have cured the reluctance to believe that our public servants (yes, the President is our servant) are incapable of such flagrant abuses of their delegated authority. The suppression of evidence by the hitherto highly respected John J. McCloy in the disgraceful Japanese-American internment episode is further proof that crimes in high places are not impossible in this country. Tragically, these were not isolated incidents. The most disastrous have been those which have served to subvert the Constitution. Then, not only do the individual victims directly involved suffer injury, but the whole nation as well.

Upon seeing an injury, the source of the injury must be found. This has happened both in the Japanese-American internment cases and in the case of the income tax tyranny. When the source of the injury is found, it becomes necessary to compensate the victims. In the case of income tax abuses, those who must be compensated are those who had their lives ruined by the I.R.S., either through massive seizures of property, or by imprisonment for nonexistent income tax crimes. Then, it becomes necessary to remove temptation from the path of the public servants to ever again tyrannize the American people in the same way. Our criminal statutes should contain specific prohibitions against even the legislative suggestion of amending the apportioning clause

In this Volume, we have recounted the legal history of the issues which have been raised by Volume I. It will be helpful to understand the background of Philander Knox and his Solicitor, Reuben Clark. Volume I presented the evidence of their fraud. Now, you will get some insight into their motivation. Next, we give you some background on the three federal constitutional amendments which preceded the Sixteenth Amendment. It will be quite clear that the latter two of those three cannot righteously form the basis for justifying any similar process of ratification. Finally, you will see how the history of the saying "The king can do no wrong" indicates nothing but bad news for the judges of this land who continue to enforce nonexistent income tax statutes.

If we study history, we are supposed to able to avoid dooming ourselves to its repetition. As an historic period, the American War for Independence has probably been studied as no other with the exception of that of Jesus Christ. Nevertheless, we have allowed ourselves to be put into the same awful tax situation as the colonists, and even worse. Obviously, avoiding doom requires more than mere study; it requires vigilance and the courage to brace up the bulwarks of freedom. The United States Supreme Court, under Chief Justice Salmon P. Chase, warned us in *Ex parte Milligan*, 4 Wall. 2, 119 & 125 (1866), stating:

> By the protection of the law human rights are secured; withdraw that protection, and they are at the mercy of wicked rulers.
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> * * *
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> This nation, as experience has proved, cannot always remain at peace, and has no right to expect that it will always have wise and humane rulers, sincerely attached to the principles of the Constitution. Wicked men, ambitious of power, with hatred of liberty and contempt of law may fill the place once occupied by Washington and Lincoln.

We do have "wicked men, ambitious of power, with hatred of liberty and contempt of law" operating in Washington, D. C., but they have powers far beyond those of any bureaucrat which has gone before. The ability to snoop upon all the people has become unnervingly precise. Snooping by the I.R.S. is traditional for that organization and historically the most abusive part of their operations. The late Senator Sam J. Ervin commented on the current situation on May 1, 1974, stating:

> The Constitution creates a right to privacy which is designed to assure that the minds and hearts of Americans remain free.
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> * * *
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> [N]ow, as never before, the appetite of government and private organizations for information about individuals threatens to usurp the right to privacy which [is among] the most basic of our civil liberties as a free people.... [T]here must be limits upon what the Government can know about each of its citizens. Each time we give up a bit of information about ourselves to the Government, we give up some of our freedom. For the more the Government or any institution knows about us, the more power it has over us. When the Government knows all of our secrets, we stand naked before official power. Stripped of our privacy, we lose our rights and privileges. The Bill of Rights then becomes just so many words.

We have witnessed a sorry sight in our federal courthouses across the country. The abject cowardice and the outright treason being committed by federal prosecutors and judges has been shameful. Yet, we are reminded that the fundamental problem lies not in their unwillingness to right a grievous wrong, rather it lies with the one who planted the seed which grew into the income tax monster. To be sure, an inept and corrupt judiciary and Justice Department has contributed mightily to the development of the abusive tactics routinely practiced by Internal Revenue Service agents. But, the illusion that they had a foundation of law upon which to stand would not have come into being had it not been for Philander Knox, the conniving agent for the robber barons. A brief expose of the life and times of Philander Knox will help to clarify his motivations.

* * *

Philander Chase Knox was born in Brownsville, Pennsylvania, on May 6th, 1853, son of David and Rebecca Knox and grandson of the Rev. William Knox, a Methodist-Episcopal preacher. Philander's father held the position of cashier in a Brownsville bank.

While attending college in Alliance, Ohio, Philander became intimately acquainted with William McKinley, then prosecuting attorney of Stark County, Ohio, and future President of the United States. Knox had testified on behalf of McKinley's prosecution of the local tavern owners who were allegedly selling liquor to the college students. Temperance was an issue upon which McKinley had built his reputation in Stark County, although he was later criticized for his own intemperance in the White House. Following McKinley's advice, Philander decided to become a lawyer and after diligent study in a law firm, was admitted to the bar in 1875.

Philander's first assignment was a two year tenure with the U.S. district attorney for Pennsylvania, James H. Reed, as an assistant prosecutor. In 1877, Reed and Knox both resigned from the Justice Department, forming Knox & Reed, a highly successful partnership which lasted 24 years. In 1891, Reed was appointed U.S. District Judge for the Western District of Pennsylvania. Less than a year later, he returned to the partnership and the friendlier confines of private practice.

Meanwhile, McKinley was making headway in Congress, gaining the chair of the House Ways and Means Committee, the most powerful in that body. McKinley was put in that position courtesy of Thomas B. Reed, the Speaker. One of McKinley's last legislative successes in the House was the sponsorship of the McKinley Tariff Act of 1890 which led to such oppressively high excise taxes, that Congressional power shifted to the Democrats in the next election. Unheeded was President Cleveland's warning that

for the imported goods that have paid customs duty."

In 1891, McKinley was persuaded to run for the Governor of Ohio against a powerful incumbent. McKinley, supported by both labor and business, won. He repaid his labor supporters by calling out federal troops to quell the infamous strike organized by Eugene V. Debs against the Great Northern Railroad in April of 1894.

As a result of supposedly having signed blank promissory notes as loans to a friend, McKinley found himself in deep financial difficulty just prior to the gubernatorial election in 1893. The amounts of the notes were filled in with far greater sums than McKinley was able to afford and he was forced to consider selling his entire estate. His impending bankruptcy was staved off, however, with some help from his old friend, Philander Knox, who had become wealthy counsel to the very wealthy. McKinley's financial redemption paved the way for his re-election as the Governor of Ohio that same year which, in turn, served as his springboard to the Republican candidacy for President in 1896.

In the Presidential race, McKinley defeated William Jennings Bryan, the attorney who later fought Clarence Darrow in the famous Scopes monkey trial in 1925. Bryan, backed by farmers and the Populists, campaigned heavily on the issue of the return to the Constitutionally mandated silver coin as the basis for the nation's money system. McKinley's rich and powerful friends, amongst which was Knox, helped him defeat Bryan and his supporters, who were mostly farmers looking for a way to escape the depression they felt was brought on by McKinley's high tariffs. Prices had, in general, risen steeply because domestic manufacturers took advantage of the significantly higher prices for imported goods which occurred under the McKinley Tariff by raising their own. While Bryan stumped all over the country, going out to meet the crowds, McKinley stayed in Ohio where his wealthy friends imported crowds to meet McKinley and to hear his speeches given in his home State. That kind of campaigning in reverse cost an awful lot of money, but McKinley's supporters contributed heavily. Standard Oil alone spent $250,000 on his effort.

After McKinley's victory, Mark Hanna, the wealthy industrialist who had coordinated the effort to restore McKinley's financial health and had directed McKinley's campaign financing, called in his marker on the new President. Hanna had indicated a desire to be Secretary of Treasury, but that was considered too political a move. He had a much stronger desire, however, to become a U.S. Senator, so, in 1897, McKinley obliged Hanna by opening up a seat in the U.S. Senate for him, so that Hanna could be appointed into the vacancy by the Ohio Governor, Asa Bushnell, who had replaced McKinley. By persuading Senator John Sherman to accept the prestigious position of Secretary of State, McKinley created a vacancy for Hanna whose credo was that "no man in public life owes the public anything." Sherman, who was ready to retire when his Senatorial term was over, did retire from the State Department within two years. Appointments to what were normally elected offices seemed to be a hallmark of the political figures associated with Knox.

Philander's star had risen fast as he gained a reputation as one of the ablest lawyers in the entire country. His stellar, nationwide reputation had a lot to do with his stellar, nationally prominent clients, Andrew Carnegie, William H. Vanderbilt and Henry C. Frick (manager of Carnegie's business interests), and their respective corporate entit-

behind him, Knox easily became the acknowledged leader of the Allegheny bar. Knox's acclaim was a reward for his victory in a big case in which the patent on the valuable Jones invention for the manufacture of crude steel was at stake. Control of that patent gave Carnegie a significant advantage over all other steel manufacturers since they had to pay him to buy the raw material in order to stay in business. In fact, Carnegie almost put J. P. Morgan out of the steel-making business because of this advantage. That conflict prompted Morgan, with the aid of several other steel magnates, to initiate a takeover of Carnegie which Knox was expected to handle. If you can't beat 'em, buy 'em out.

In 1892, Knox represented Frick, who was then managing Carnegie's steel plant, after he was sued by the steel workers who had participated in the infamous Homestead strike. They had been beaten up in the conflict which ensued when Frick called upon 300 Pinkerton detectives to come in and disperse the striking workers.

In 1894, Knox proved his worth, again, by deflecting prosecution and civil suit against Carnegie when it was shown to Congress that Carnegie had defrauded the United States by supplying an inferior grade of steel armor plate for U.S. Navy warships. Two of the presidents of Carnegie, Elbert Gary, Morgan's attorney, and Charles Schwab, were said by a Congressional investigating committee to be involved in "frauds" of "unblushing character" and were men with a "disregard for truth and honesty" and "unworthy of credence." These two had deliberately provoked the Homestead strike. In addition, Knox kept Carnegie's fat from the prosecutorial fire even after Alexander J. Cassatt, president of the Morgan-controlled Pennsylvania Railroad, testified that Carnegie had regularly received illegal rebates from the railroads.

Knox's other heavy-hitting client, the Vanderbilt family, was connected to Carnegie through their enormous holdings in a multitude of different railroads. Knox's lesser clients were also quite powerful corporate entities, mostly railroads.

In 1899, Philander was offered the post of Attorney General by his old friend, William McKinley, who had become President of the United States. Knox, however, declined because he was in the process of arranging the merger of the Carnegie interests, which included railroads and oil, with the coal and iron mining, and the railroad corporations controlled by Morgan and his allies, into what was to become the largest corporate holding company up to that time—United States Steel—capitalized at over $1.4 billion, equivalent in current figures of upwards of a $70 billion giant. Morgan had come a long way from his days of dealing in arms frauds with the U.S. Army. During the Civil War, Morgan sold the Lincoln administration its own weapons. Apparently, Morgan hadn't left that type of tactic behind. As was common for the robber barons, the stock issued against the corporate assets of United States Steel was heavily watered, that is, the value of the stock bore little relationship to the actual value of the assets underlying the stock price. The robber barons were aptly named because of their propensity to use every possible underhanded technique, including fraud, to swell their coffers.

Knox did very well for his longtime client. Carnegie received $447,000,000 in cash, bonds and stock of United States Steel, four times what the owners of Federal Steel with comparable assets received. But, Knox also did fairly well for his new client, Morgan. Morgan later admitted that he would have easily paid another $100,000,000

totally independent.

The work on that monumental and historic piece of corporate conglomerating lasted for two years. When the paperwork settled, twelve huge corporate entities had been merged. The new corporation was indescribably immense, taking in the interests of nearly all of the robber barons. Morgan was fond of referring to his business philosophy as "community of interest." His "community of interest" intended to forever foreclose all competition in the corporate community that he had commissioned Knox to build. This enormous enterprise gathered to itself the community of the robber barons of steel, including Rockefeller. When it was finished in February of 1901, the enormous monolith was delivered, by Knox, into the hands of J. P. Morgan and his associates. Part of the package arranged by Knox included his longtime partner, James H. Reed, who became a Director of the steel combine. Reed's son, David A. Reed, later became a U.S. Senator for Pennsylvania, appointed following the death of William Crow in 1922.

One of the companies which became a crucial acquisition by Morgan for U.S. Steel was the Consolidated Iron Mines. Consolidated was acquired from John D. Rockefeller, the avowedly Christian robber baron, for a price of almost $80,000,000. Rockefeller, in a manner too much like his less religious business acquaintances, swindled the Merritt family of seven prospectors out of one of the greatest iron ore reserves in the mineral-rich Mesabi Range of Minnesota.

The Merritts were scouting about for a loan to fund development when they met Rockefeller's avowedly Christian minister who persuaded them to let John D. bankroll their efforts. Thus lured into making several loans on a 24-hour call basis with John D., the Merritts' loans were called by Rockefeller unexpectedly. When they couldn't come up with $420,000 in 24 hours, their collateral, Consolidated, was scooped up by the man the Merritts had thought would never take advantage of them because he appeared so kindly and because of the "Christian" image he projected.

Rockefeller was later successfully sued by the Merritts for fraud. A judgment was entered against Rockefeller for $940,000, but when the Merritts ran out of money in the appeal process (Rockefeller did not, of course), they were forced to settle for $520,000, but without the repossession of Consolidated which was obviously their real goal.

McKinley, during his second Presidential term, again offered Philander the post of Attorney General to replace John W. Griggs who just happened to be resigning. Philander graciously accepted this time because he just happened to be finished with the U.S. Steel merger. Morgan's "community of interest" must have cried big crocodile tears at having lost Philander to public service. Philander's public, Carnegie and Morgan, had personally promoted Knox into the position, the former by letter to McKinley and the latter by walking through the front door of the White House and visiting. The Anti-Trust League vigorously protested confirmation of the appointment with the Senate Judiciary Committee. Its comment concerning Knox asked:

> Is it proper for a lawyer to appear against his former clients? Can a lawyer willing to appear against his former clients be trusted to prosecute them if guilty? The charges we have filed refer not only to his dereliction of duty in the cases we have filed with him, but also bear upon his admitted intimate

during the time Mr. Knox was their associate and adviser.

To no one's surprise, Knox was confirmed. When the public outcry arose for an investigation into the new bruising steel monster, the new Attorney General, Philander Knox, replied that he knew nothing and could do nothing. This was the man who was going to enforce the Sherman Anti-trust Act? No doubt he would, as long as he asked J. Pierpont Morgan for permission. Morgan apparently did not give Knox permission to enforce Anti-trust against U.S. Steel.

Despite heavy precautions, an assassin, named Leon Czolgosz, walked up to McKinley during the Pan-American Exposition in Buffalo, New York, on September 6th, 1901, with a scarf wrapped around his hand concealing a pistol. The Secret Service had suspected a possible assassination attempt. Czolgosz fulfilled those expectations, getting to within spitting distance of McKinley before shooting him down. Although the doctors thought that the President's wounds weren't serious, gangrene set in and McKinley died on September 14th. After McKinley's death, Philander continued as Attorney General under Theodore Roosevelt.

During the presidential campaign of 1900, McKinley, as the incumbent, hadn't had to worry about his nomination, but there was a contest over the vice-presidency. The President's rich and powerful friends publicly wanted just one thing—no Theodore Roosevelt. He had publicly been far too antagonistic towards Big Business. When Roosevelt ascended to the Presidency following McKinley's death, he was a bit of a disappointment to those who expected him to really roust the robber barons. Compared to the succeeding administration, the old Rough Rider wasn't.

Despite the public outcry for an end to the gigantic corporate trusts which had been formed by the robber barons to squash competition in all the basic industries, Roosevelt broke fewer trusts in his eight years than Taft did in four. Roosevelt initiated twenty-five such suits, while Taft initiated forty- nine. In 1911, when the Taft administration set out to ostensibly prosecute the United States Steel Corporation, Roosevelt set about explaining why he didn't do it when he was President and why Taft was wrong in doing it in an article entitled "The Trusts, the People, and the Square Deal." According to Roosevelt, the giant corporate trusts had "been guilty of immoral and anti-social practices," and that there was "a need for far more drastic and thoroughgoing action." But, he hadn't bothered to take such action, which hadn't bothered his Attorney General, Knox, nor Knox's rich and powerful clients. It was a very square deal for them. In fact, the actions which did take place against the railroad companies were largely done with the urging of the railroad industry's giants. The railroad owners, rather than the farmers and shippers, were the single most important advocates of federal regulation from 1877 to 1916, because that regulation, with their own agents working in the federal commissions, enabled them to gain greater control over the industry.

Roosevelt did coin a term for himself—"trustbuster"—which didn't exactly fit his deeds. Roosevelt did make a bow to the clamor for increased federal control of the great trusts and of the rapacious railroads by ordering Knox to bring suit against the Northern Securities Company. Roosevelt had supposedly gone ahead without any consultation with the heavyweight capitalists who had formed Northern, J. P. Morgan,

1904. On March 14th, 1904, the Supreme Court of the United States declared the corporation an illegal one in restraint of commerce. Northern Securities had actually been formed as a railroad holding company by Morgan as a show of strength for the benefit of Harriman, Rockefeller, Sr. & Jr., and their bankers, Kuhn, Loeb & Company. Morgan wanted to show his fellow robber barons who was really in control of American business. Hill already knew. But, the dissolution of Northern was relatively meaningless and deemed "inconsequential" by the financial press since there had been no competition between the two major railroads held by Northern Securities in any event. The break-up of Northern Securities had a net effect of zero upon competition in that case. It did have the effect of convincing the public that the administration was actually doing what they were supposed to be doing.

Of course, Knox had seen to it that Morgan's interests had already been given proper care and the other three suffered no apparent damage to their operations from losing that case. Their enormous holdings remained intact and were returned in that condition by a respectful Supreme Court. Although he certainly could have and should have, Knox, of course, didn't even dream of pursuing criminal sanctions against these former allies and clients. And their boy, Roosevelt, had a big public relations sucker for the public.

It had been through a dazzling array of fraudulent manipulations and bribery, that one of the principal robber baron defendants in the Northern Securities fraud, Harriman, acquired his immense fortune. In 1909, the Supreme Court provided Harriman with a pass when a federal inquiry was being made into the $120,000,000 profit in sales of stocks which Harriman and his associates had made, early in the century, to the Union Pacific Railroad of which they were directors. It was learned, however, through other means how Harriman's frauds were carried out with the aid of public policy in the hands of Theodore Roosevelt.

Harriman and his partners first sold themselves $432,000,000 of Chicago and Alton Railroad bonds. Then, bribing the corrupt New York Legislature, they bought a piece of legislation which authorized New York State savings banks to invest in those bonds. Roosevelt, who was then New York Governor, signed the bill and the price of the bonds shot up to the extent that Harriman and his business cabal realized a handsome and rather immediate profit of just under $60,000,000. Though Harriman's railroads were engaged in the same practices which had been so criticized by the Supreme Court in the Northern Securities case, nothing further was done by Knox, or any of his successors, against Harriman's real corporate interests, thanks in large measure to the Supreme Court's apparent interest in protecting Harriman from any real harm.

One of the other four principals in the Northern Securities trust, James J. Hill, had aided Roosevelt in one of Teddy's favorite hobbies—conservation. In a speech given at a White House conference on conservation held May 13th to 15th, 1908, Hill announced that the United States was on a collision course with shortages of all the major resources. According to him, all the major resources of industrial America were in critically short supply because Americans had so greedily been using them up. The Americans, to which he was really referring, were himself and his super-rich cohorts, but, this is the same baloney that robber barons throughout our recent history have tried to feed us whenever they perceive that the public is catching on to their

that is squeezed out of the turnips who buy their products.

Hill specifically mentioned the dwindling supply of public lands as one of his overriding concerns, saying that it was necessary that no more of that precious commodity be squandered by selling it at cheap prices to people who just wanted to farm on it. Hill, like the other railroad tycoons, had some pretty nervy reasons for wanting to prevent anyone else from availing themselves of the generous federal land programs. The history of railroads with which Hill was associated is one of incredible fraud and outright theft in the matter of public lands.

During the period from 1850 to 1872, because of the corrupting influence of the robber barons, Congress gave over 155,500,000 acres of public lands either directly to railroad corporations, or to various States, which then transferred title to those same corporations. Normally under the land grant acts, individuals were entitled to public lands only after having entered the land and shown that they were going to live on the land and improve it. No such requirements were made upon the great corporations. Additionally, the corporations were relieved from having to pay property taxes upon these lands by a clever ruse built into the railroad grant acts. The patents for the lands granted to the railroads would not be issued unless and until small fees to offset surveying expenses incurred by the United States had been paid. These fees were either not paid, such that title didn't pass preventing the assessment of taxes (since the State couldn't tax the United States), or paid only after the railroad found a buyer for a particular unused tract. While those individuals who had gone the normal route of having to work the land paid their taxes, the railroads paid none, using the State treasuries to let them speculate in the rising prices of land.

The great cattle companies and logging enterprises, under the direction of the railroad companies, also committed great frauds in the granting of public lands. The former engaged in the practice of preventing settlers from entering the land for the purpose of making their claims under the federal statutes. When water became a problem for the smaller individual settlers, these men of bad will invariably tried to cut off their water supplies. The logging companies conspired to defraud the United States by hiring surrogate grantees, supplying them with sufficient funds to pay off the acreage fees. When title passed from the United States, these surrogates would then transfer the title to their employers and leave after collecting their salaries. The lumber companies would then proceed to rape the land, denuding it completely of timber. Once done with the land, it was frequently sold off, the richest part of its value having been hauled off by rail.

The various robber baron railroads induced Congress to advance large doses of public funds and lands to promote the building of transcontinental lines. Union Pacific Railroad was loaned approximately $27,000,000 and Central Pacific almost $26,000,000, the payback of which is somewhat uncertain. These prosperous concerns were given outright 13,000,000 acres of public land and 9,000,000 acres, respectively. The Northern Pacific received 47,000,000 acres; the Kansas Pacific, 12,100,000; the Southern Pacific, 18,000,000. It was, to a considerable degree, because of these well-known raids of public lands perpetrated upon the nation that the public was in such a ferocious mood about the super-rich at the end of the 19th century and the beginning of the 20th.

somewhere and it wasn't back to the United States nor to philanthropic causes. The majority report to the stockholders of the Union Pacific Company referred "to the lavish and reckless distribution of the assets of the company in dividends," yet couldn't explain why the company "found itself early in 1884 on the verge of bankruptcy." The reason was simply that the Union Pacific was used as a fully capitalized front into which and out of which profits were regularly laundered, being siphoned off for the personal benefit of the railroad barons rather than for the small shareholders. Jay Gould, nominal owner of Union Pacific, was also one of the chief bribing agents of the railroad companies. The minority report of the Pacific Railway Commissioners said that "[h]undreds of thousands of dollars have been disbursed at the State and National capitals for the purpose of influencing legislation." In the late 1890's and early 1900's, Morgan, Harriman and Rockefeller were all involved in the Union Pacific.

Whatever part of the public lands ceded to the railroads turned out to be unlivable, whether the railroad companies had sucked the life out of them or whether they were hostile before the railroad companies had a shot at them, Congress allowed these railroad robber barons the privilege of exchanging such lands for those which had not yet been raped. It was a simple case of having their cake and everyone else's and getting to eat all the frosting. Charges were made in Congress of the commission of these and other frauds in the procuring of public lands by the great corporations, but since Congress had been used only too willingly to allow these frauds, nothing of any significance was ever done by the Justice Department to these corporate land bandits. Some things never change. The rich and powerful get richer and more powerful, while the poor get raped and convicted.

It's easy to see why Hill would say, in 1908, that timber, coal and iron were coming into short supply. He and his robber baron friends had scratched all that their grubby little fingers could scrape off the free public lands they had taken. It's also easy to see why Hill would say that "[n]o longer can we say that 'Uncle Sam has land enough to give us all a farm.'" He and his robber baron cohorts had been so busy stealing the public lands from the rest of the people of this country for themselves, naturally, there wasn't much left for the poor individuals for whom it was intended. It's also easy to see why, at that time, 1 percent of the population in the United States owned more than the total possession put together of the other 99 percent.

Roosevelt's relationship to Hill was another example, like Harriman, of the lack of a proper distance between a President and men of complete disrepute whom he publicly seemed to decry. Also, while speaking out of the other side of his mouth, Roosevelt coined the term "muckrakers" for those investigative writers, like Ida Tarbell, who revealed the true nature of the robber barons, a nature far different than the All-American boy, up-from-dirt image that the media had painted.

Knox's clients, the Vanderbilts, had defrauded and bribed their way into possession of millions of dollars of railroad bonds and stocks. Cornelius, the elder Vanderbilt, lied repeatedly about his wealth to the tax collectors. Upon his death, however, the extent of his fortune was revealed and the New York City Commissioners of Assessments and Taxes proceeded to make a public effort to collect some portion of the millions of dollars out of which he had cheated the city. That effort was, however, blunted

was not particularly successful in their efforts to pump the Vanderbilt family fortune for its just due which meant that Philander was successful. The Vanderbilt family choo-choo, the New York Central, had been discovered giving John D. Rockefeller illegally discriminatory rates and kickbacks. In a series of financial maneuvers, Morgan went to William Vanderbilt's rescue and took over the situation and the New York Central. When Morgan was through with William Vanderbilt, he was probably checking for the shirt on his back.

In order to take advantage of the political situation which existed under Roosevelt, Knox channeled Roosevelt's public anti– business attitude into constructive avenues. Philander was instrumental in persuading Roosevelt that utilization of the Sherman anti-trust statute could only be effective if accompanied by increased federal control over all business. Accordingly, on December 3rd, 1901, Roosevelt announced "his" plan to regulate all large business combines for the good of the people. He didn't say which people.

Knox advocated federal statutes which ultimately gave his rich and powerful friends more power over interstate commerce. With Roosevelt's agreement, Philander drafted legislation which created the Department of Commerce and Labor and the legislation which gave the Interstate Commerce Commission complete control of railroad rates. It had been a relatively simple matter to have allies of the robber barons appointed to the I.C.C. With Knox's help they were now going to carry out a mandate handed down by Morgan in 1889 at a meeting of the great robber barons at the Morgan mansion. The I.C.C. was slated at that time to be a federal agency to aid in the restraint of trade. Its ultimate purpose was to allow the robber barons to destroy their competition with relative impunity. Prior to the Northern Securities break-up, the scheme didn't have official sanction. It existed only as "the President's Agreement—an agreement among gentlemen," as Carnegie derisively called it, saying that it was a conspiracy "in which the parties engage to control, strangle, and restrict the future development of our magnificent railway system . . . at a time when the country requires this development as much as it ever did. These gentlemen are not going to engage in building lines which will give the public the benefit of healthy competition, or permit such to be built hereafter."

Knox's legislation gave official sanction to the Morgan conspiracy. In other words, by the time the Supreme Court heard the Northern Securities case, Philander's rich and powerful friends had finagled a way, with Philander's help, to become even more rich and powerful. The robber barons would no longer be guilty of restraint of trade, their administrators in the federal administration would. The feeble-minded public naively believed that Philander Knox had delivered some kind of fatal blow to Morgan and his business associates in the Northern Securities case, but his next career move was all that needed to be shown in order to demonstrate how naive that belief was.

After his victory "against" Northern Securities in the Supreme Court, Philander decided to leave the Attorney General's office. Unemployed? Not for long. Philander was quickly appointed to the U.S. Senate on June 10th, 1904 by Pennsylvania Governor Samuel W. Pennypacker to succeed the recently late Matthew S. Quay who had been embarrassingly unsuccessful in an attempt to bribe fellow U.S. Senator Pettigrew. Quay offered Pettigrew $250,000 to persuade him to vote against an emergency

It wasn't actually Pennypacker who appointed Knox. In a meeting held in the offices of the President of the Pennsylvania Railroad, Alexander J. Cassatt, in Philadelphia, several powerful capitalists and their friends gathered to discuss who they would like to see take the place of the recently deceased Quay. These men were Senator Boies Penrose, the remaining Pennsylvania Senator and co-boss of Pennsylvania politics with Quay; Henry C. Frick, Philander's longtime Carnegie client; 'Iz' Durham, the powerful Philadelphia political boss; and Cassatt. An agreement was struck that Knox should be Senator, upon which they broke up and regathered at Cassatt's house. Joining them for this second meeting was Governor Pennypacker, who had the responsibility for filling the Senatorial vacancy. Pennypacker was educated in the course of the evening to the wisdom of choosing Knox. Pennypacker, a man who knew on which side his bread was buttered, chose Knox. So, it clearly may be seen that Philander's rich and powerful friends were not unhappy with his performance under Roosevelt.

In January of 1905, Knox was elected to a full term in the U.S. Senate by the Pennsylvania State Legislature (which was prior to the Seventeenth Amendment when the State Legislatures still elected U.S. Senators). Knox became a member of the Committee on the Judiciary and then was elevated to Chairman of the Rules Committee, the most powerful of the Senate committees. Not surprisingly, he was active in railroad rate legislation. The Interstate Commerce Commission possessed no real power until the Hepburn Act of 1906, for which Knox was largely responsible, gave the commission the authority to regulate railroad rates. Thereafter, Roosevelt's so-called progressive reformers successfully pressed to escalate that authority.

Knox was so busy that he turned down two offers for appointment to the Supreme Court. He was also in comfortable company with other bought-and-paid-for Senators. All of the major industries and corporations were ably represented by these dishonorable men. In fact, Theodore Roosevelt spoke of the corruption which was typically rampant in Eastern legislatures, saying that there were two kinds of pay-offs: (1) "when a wealthy corporation buys through some measure which will be of great benefit to itself, although, perhaps an injury to the public at large," and (2) "when a member introduces a bill hostile to some moneyed interest, with the expectation of being paid to let the matter drop." Roosevelt concluded that about one-third of the legislators with which he worked took bribes. When questioned in Congress, an official of one of the corporate trusts said that "We get a good deal of protection for our contributions." Upon being asked whether his great trust had attempted to control Congress in order to obtain the passage of legislation favorable to the trust, he answered: "Undoubtedly. That is what I have been down here for."

Among those who were in the Senatorial "multimillionaires' club," besides Knox, were Senators Elkins, of West Virginia, Clark, of Montana, Platt and Depew, of New York, Guggenheim, of Colorado, Foraker, of Ohio, and many others. In the Senate, moreover, Knox was amongst the shrewdest, most astute members of that body. There were few men, either in the courts or in the Senate, who cared to match up against him in any kind of fight, legislative, courtroom or financial.

During Knox's first term in the Senate, the Morgan– controlled financial Panic of 1907 hit, which instigated a Congressional inquiry into the currency and banking systems of the United States. This inquiry, led by Nelson W. Aldrich, ultimately resulted

Before he had completed a full term in the Senate, Philander moved on, having accomplished the legislative mission on which he had been sent by his robber baron bosses. This time he was called by President Taft, another close friend, to be Secretary of State in December of 1908. Knox took office on March 5th, 1909, resigning from the Senate after a short, but profitable, stay.

Knox's influence upon Taft was dominant. Prior to the taking of his oath of office, Knox went into private session with Taft on his very first day in the White House, reportedly the only business to which Taft tended that day.

He was immediately the most powerful figure in the Taft administration, helping to direct Taft's selection of the remainder of his cabinet. Of those which Taft selected from the choices given to him by Knox, seven of the nine were lawyers five of those seven "intimately concerned with great corporations, transportation or industrial." Knox was Taft's primary confidante in all matters.

Knox's first task was reorganizing the State Department, and he instituted far-reaching reforms. He also became active in organizing the international court at the Hague. He also fought hard for the concept of the Rockefeller/Morgan-inspired League of Nations, though his public stance was nominally opposed to the treaty in that the Treaty of Versailles was a part of the same legislative package. The conservative periodical, The Nation, lauded his support for the League. He was considered responsible for persuading Taft to take "the world's greatest step toward universal peace through the French and British arbitration treaties."

It was, however, Knox's proclamation of the era of "Dollar Diplomacy" which was his legacy to United States foreign policy. Under that policy, the Secretary of State's office was used to promote and protect American capital investment all over the world—"a project altogether unfit for a nation of shopkeepers, but extremely fit for a nation whose government is influenced by shopkeepers." The groundwork for that policy had been laid in 1904 by the imperialistic Roosevelt corollary to the Monroe Doctrine, which said basically that, although other nations might not interfere with the sovereignty of any nation on the American continent, the United States could. It was a doctrine which fit quite neatly into the plans for worldwide conquest which had been laid by Morgan during the period in which corporate attorney Knox was assembling U.S. Steel. Under the leadership of Secretary of State Knox, the United States did interfere with the sovereignty of other nations on the American continent whenever Knox's robber baron friends could profit.

In the case of a Honduran financial problem which arose in 1909, Knox brokered a deal between that nation and J.P. Morgan & Company which resulted in the control of Honduran customs (its taxing authority) being put into the hands of these American bankers in 1911. The full faith and credit of the American middle class was pledged to guarantee the Morgan loan to Honduras. Through Knox's diplomatic maneuvers, the U.S. Navy was sent to intervene in the internal affairs of Nicaragua on behalf of rebel forces in October of 1909. Those forces ultimately prevailed in August of 1910. Following their triumph the rebels' leader was coerced by Knox into making arrangements with the United States which secured control of customs in that country as well. As a part of the treaty made with Nicaragua, Knox devised a Nicaraguan claims commission, which was composed of two Americans and one Nicaraguan. This commission,

the treaty, a preliminary loan was made with American bankers. One American was hired as a financial adviser to the Nicaraguan leaders, the two claim commissioners were appointed and other Americans were named as collector-general of customs and assistant collector-general of customs.

Both the treaties with Honduras and with Nicaragua urged the necessity of the United States lending assistance to both countries in the rehabilitation of their finances. As a result, both provided for loans to be guaranteed by the United States. The treaties made for a risk-free investment environment for Knox's banker friends. If the raw deal of Dollar Diplomacy was not obvious to all citizens of Central America, Knox wanted to make sure that everyone understood what he was really about. In a typically heavyhanded fashion, Knox took a tour of Panama, Costa Rica, Nicaragua, Honduras, Salvador, Guatemala, Venezuela, the Dominican Republic, Haiti, and Cuba in early 1912, making speeches and addresses to allay the well-founded suspicions of ulterior motives on the part of the United States. He was the first Secretary of State to make such a grand tour. His announced purpose was to make "the personal acquaintance of their leaders . . . studying at close hand their special problems." It was this kind of oafish attempt at public relations which earned Knox criticism from James Bryce, the British ambassador at Washington, for giving "the impression of having cared little, known little, or thought little of foreign politics till he became a minister, and as being, partly from a lack of diplomatic or historical preparation, partly from a certain impatience of temperament, inclined to be autocratic and rapid in his decisions."

These were some of the earliest attempts by the United States to violate the Monroe Doctrine (under the Roosevelt corollary) by propping up puppet regimes which granted American bankers control over the fortunes of their countries. And people in this country sometimes wonder why the people in those countries resent us so much.

Knox brokered loans from American banks to Argentina so that Argentina could afford to buy warships from American shipbuilding firms. As a part of that deal (which was meant to be a confidential part), Argentina was given the plans to the latest American warships. Hypocritically, Knox was an early disarmament advocate. But, in attempting to put the arm on Chile to coerce that country's leaders to do business with his wealthy clients, Knox blew up the Argentinian deal.

Knox engaged in the same kinds of conniving in the Far East. To the detriment of England, France and Germany, which had nearly completed financial arrangements with Chinese leaders for the construction of a railroad, Knox did an end-run around negotiators for those three countries and made separate arrangements with the Chinese using the Boxer Rebellion debt owed to the United States by China as a bludgeon along with other threats of financial reprisals. In September of 1908, Knox opened the door for Harriman and his bankers, Kuhn, Loeb & Company to enter into negotiations with the Chinese. Harriman was scheming to put together a round-the-world transportation system using his railroads and steamship companies. Willard Straight, supposedly an idealistic diplomat, after seeing how well taken care of Knox was, fell prey to the siren song of money and became an agent for not only Harriman and Kuhn, Loeb, but Morgan and his First National Bank and the Rockefeller-controlled National City Bank as well. The three banks formed a syndicate and Straight, under

States all over the world. Knox's diplomatic blundering, if it was blundering, created an atmosphere of ill will between France, Germany, Russia, Japan and China and crystallized the particular alliances which were to slowly but surely contribute to the escalating tensions which resulted in the first World War. It has been said that "[h]is actions contained little that was 'moral' by American standards; at times they were naive. He failed because he lacked the depth of knowledge and the stature needed to be a great Secretary of State. Huckstering and diplomacy are not synonymous."

Huckster, indeed. In 1909, on Knox's advice, after Taft and the Republicans had promised lower tariffs during the 1908 campaign in order to boost the economy following the panic of 1907, Taft called a special session of Congress to consider this issue. The House passed a bill that did lower most duties, but, following Senator Aldrich's recommendation, the corporation-owned Senate added over 800 amendments, and the final rates were little lower than they had been previously. Despite vehement opposition, the Payne-Aldrich Tariff passed and was signed by Taft. In a speech delivered on September 17th, 1909, Taft referred to the sham as "the best tariff bill" ever passed.

Whenever Taft had to make a nomination for an important appointed position in his administration, Knox was there to ensure the proper choice. In 1910, Knox succeeded in having Judge Willis Van Devanter of the Eighth Circuit Court of Appeals appointed to the United States Supreme Court, after once having recommended him to the Department of the Treasury. This particular appointment was roundly criticized by William Jennings Bryan, who made the assertion that the primary reason that Van Devanter was named by Taft was Van Devanter's known bias in favor of the great corporate trusts. Van Devanter had, in fact, made several highly favorable rulings for the benefit of the Union Pacific Railroad which resulted in the grant of enormously profitable rights of way and of the acceptance by Van Devanter of practices in restraint of trade. That should have been no surprise since he had been a partner in the law firm which represented the Union Pacific Railroad.

Knox had similar success in supporting the appointments of two of the most forgettable justices in the history of the high court, with Joseph Lamar in 1911 and Mahlon Pitney in 1912, both allies of Knox's clientele. Lamar, the second cousin of former Supreme Court Justice, Lucius Lamar, followed his cousin's footsteps with a fair degree of precision. Joseph Lamar, like his cousin, was also an attorney for several large railroads. The junior Lamar also represented some powerful corporate trusts. At least one of the railroads he represented was Morgan– controlled. The appointment of Pitney, who had been a friendly judge in New Jersey, the home State of the Standard Oil Company, the Steel Trust, the Tobacco Trust, the Sugar, Beef, Copper, Whiskey, Machinery, Tin Can, Harvester, Rubber, Leather, Cotton Oil, Cotton Yarn, Cotton Duck, Felt and Smelter Trusts, was good news for Big Business.

The Sixteenth Amendment was given its final and decisive shove through Congress by Knox's fellow Morgan agent, Senator Nelson Aldrich, of Rhode Island. The opposition in the Senate to the Amendment had been formidable. The great corporate interests were fighting tooth-and-nail to prevent the passage of an income tax amendment through Congress. However, Aldrich, whom all the Senate knew spoke for the "community of interest" of both Morgan and Rockefeller, changed sides being supported

> During the past few weeks the unexpected spectacle of certain so-called "old-line conservative" Republican leaders in Congress suddenly reversing their attitude of a lifetime and seemingly espousing, through ill-concealed reluctance, the proposed income-tax amendment to the Constitution has been the occasion of universal surprise and wonder.

It should have been the occasion of universal suspicion and skepticism. Any suspicion would later prove well taken. In 1910, at the outset of the ratification process of the Sixteenth Amendment, only eighteen American foundations existed. These foundations were, of course, tax free, philanthropic as they theoretically were. By 1920, the number had grown to 94. By 1930, 267; 1940, 555; 1950, 2193; and by 1960, 5022. The names Carnegie and Rockefeller appear on some of the oldest of these post-1910 foundations by no accident. The robber barons had already prepared their exit from the income tax system. They were more than happy to tell Senator Aldrich to get an income to assist in maintaining the government. If Congress insists on making stupid mistakes and passing foolish tax laws, millionaires should not be condemned if they take advantage of them." The super-rich have evaded the income tax ever since, leaving Congress and the I.R.S. to pick the pockets of the lower classes, which could have been the only intention of the super-rich in supporting the income tax.

Senator Robert Owen, who co-authored the Federal Reserve Act with Aldrich, testified before a Congressional Committee that the banking industry conspired to create financial panics, like that of 1907, in order to rouse the people to demand financial reform which would be directed by those who caused the panic. It was this kind of atmosphere which was created by the robber barons to encourage both the move to ratify the Sixteenth Amendment and the passage of the Federal Reserve Act.

Following Philander's fraudulent proclamation of the ratification of the Sixteenth Amendment, he resumed a law practice in Pittsburgh in March of 1913. Later that year, in October, Knox was invited to the palatial yacht of Nelson Aldrich (whose daughter married John D. Rockefeller, Jr., and who was godfather to Nelson Aldrich Rockefeller) along with former President Taft and H. P. Davison, the Morgan partner who was directly involved in early support of the Bolshevik Revolution in Russia, to discuss the Federal Reserve Act which Aldrich was going to write. There were assurances given to a rightfully worried Taft that no one would ever know that he had been on the boat that day just as no one had ever found out about a similar excursion Roosevelt had enjoyed previously. The basis for discussion was the report of the Aldrich Commission of 1912 which had recommended a national bank. The most significant need was a strategy for convincing the American public that a national bank controlled and owned by the robber barons would be good for them. The decisions made on that cruise became the basis for the Federal Reserve Act of 1913.

In 1916, Knox longed to be back in the Senate. His wish was somebody's command and he was elected again to the Senate to succeed Senator George T. Oliver, whose death was just as timely for Knox as was Senator Quay's. Unfortunately for Knox and his rich and powerful friends, somebody had to be appointed to fill out his term because he died on October 12th, 1921.

* * *

of the Secretary of State. Without Clark's immeasurable aid in providing an excuse to commit fraud, Knox may have been unwilling to proceed.

Clark was born on September 1st, 1871, in Grantsville, Utah. His mother was the daughter of a bishop in the Mormon Church in Salt Lake City, and so, Clark became a stalwart in the Mormon Church. In fact, at his death in 1961, Clark had achieved a lofty status, that of First Counselor in the First Presidency of The Church of Jesus Christ of Latter-Day Saints.

Clark was very bright, receiving his B.S. degree at the University of Utah when he was only twenty-seven, which doesn't sound very impressive unless you become aware that he didn't start high school until he was twenty-three. In 1906, he received his LL.B. from the Columbia University law school.

Shortly after graduation, Clark was hired on at the Department of State of the United States. Secretary of State Elihu Root spotted Clark's potential and made him Assistant Solicitor in the Department of State in September, 1906, a big leap forward for someone so recently out of school. Internationally significant legal questions were immediately turned over to Clark's care.

After Knox assumed the office of Secretary of State in 1909, Clark's focus was changed. The disgraceful era of "Dollar Diplomacy" had arrived and Clark was sent off to handle the negotiations and legal paperwork for Chile and Nicaragua. Both of those situations deteriorated into coercion, financial in both cases, with military force being actually employed in the case of Nicaragua, to force the smaller countries to ante up for Knox's banker friends. Through his experiences with Knox's South American adventures, Clark quickly learned that, under Knox, he would have to justify highly questionable actions which verged upon the criminal with some difficult linguistic gymnastics, both for Knox and himself.

When the office of Solicitor for the Department of State opened up in July of 1910, Knox tapped Clark and President Taft acceded to Knox. Clark as Solicitor was actually an officer of the Department of Justice, ranking as an Assistant Attorney General, but his loyalties were securely fastened on Knox. He was the chief legal officer for the Department of State. All legal questions arising in the Department of State were to be referred to him for opinion.

Clark was responsible for writing all the treaties which were proposed for enactment between the United States and other nations, including those which ultimately became points of irritation for other countries starting to take sides for the World War.

On May 14th, 1912, he addressed the International Red Cross Conference, in Washington, D.C., promoting the idea that Red Cross societies ought to lend their assistance to forces engaged in insurrection, revolution, or any kind of civil warfare. This inflammatory suggestion brought angry recriminations from Russia, Germany, and Italy, among other nations, who banded together to reject Clark's proposal. At that time, most European countries were experiencing communist revolutionary rumblings and Clark's immodest suggestion was nothing less than a slap in the face of their leaders.

In August of 1917, William Boyce Thompson, a director of the Federal Reserve Bank, the Morgan-Rockefeller owned national bank conspiracy, followed the route

resentatives from Liggett & Myers Tobacco, Swift & Company, Chase National Bank, the McCann Company and National City Bank, along with lawyers from several Wall Street law firms with large oil and railroad clients including Standard Oil and the Harriman brothers, a mining promoter and a pair of engineering consultants. The mission carried only eight medical personnel of which only five were medical doctors and seven support personnel of which only three had anything to do with a medical mission. The five medical doctors and the three orderlies left in disgust after seeing that the mission of mercy was nothing more than a mission of money. Lenin was given over $3 million in aid by Thompson, with which weapons were purchased to advance the Bolshevik Revolution. In return, the oil fields and other concessions of Russia were opened to Knox's friends. Was it purely coincidental that Clark, the highly trusted underling of the Morgan agent supreme, Philander Knox, forecast the Russian intrigue in which the Red Cross was to become involved even before the Red Cross had been taken over by Morgan associates?

The Law That Never Was, Vol. I, discusses Clark's propensity for lying and fraud relative to the nonexistent ratification of the Sixteenth Amendment. It should be clear that Clark did not have the welfare of the ordinary American in mind when he criminally conspired with Knox and, as yet, unnamed co– conspirators in the States to treacherously and treasonously destroy the Constitution of the United States on behalf of the robber barons.

As Knox left the State Department shortly after his term in office, so did Clark. On January 15th, 1913, a month before he authorized the "Golden Key" memorandum (see *The Law That Never Was*, Vol. I, at 5-20), Clark was promoted to General Counsel to represent the United States before the Mixed Claims Commission, to adjudicate claims between the United States and Great Britain. He also kept touch with Knox, becoming involved with one of Knox's pastimes, the International Court of Justice at The Hague. Clark was named Chairman of the American Preparatory Committee, the United States representative in the International Preparatory Committee for the Third Hague Conference held at The Hague in 1915. The rich and powerful had world conquest on their minds even then. World conquest demands the same kind of perverted court system worldwide as they have managed to purchase here.

Knox wrote the following letter of appreciation to Clark upon his resignation:

> In taking note of this fact [his resignation] I seize the opportunity of expressing to you my deep and sincere appreciation of your service in that office. It has been characterized by a degree of ability and loyalty that has commanded my highest appreciation and gratitude.

Clark had given Knox of his "ability and loyalty." Unfortunately, neither Knox, nor Clark, could claim honesty, integrity, morality, or any shred of patriotism.

* * *

As has been shown, Knox dealt with the rich and powerful and their political servants continuously throughout his life. He was a common thread in the administrations of McKinley, Roosevelt and Taft, controlling those supposed leaders of the American people for the special interests of his masters—J. P. Morgan, Andrew Carnegie, William H. Vanderbilt, John D. Rockefeller, Edward H. Harriman and

Company of New Jersey et al. v. United States, 221 U.S. 1 (1911), widely hailed by the robber barons as "entirely satisfactory," "most favorable to the corporations," and "great!" Morgan said "I expected it." Indeed, he did. Men like him expect to get what they pay for. The doctrines applied by the Court to the great trusts were laid down by Morgan-agent Knox in a speech delivered before the Pittsburgh Chamber of Commerce on October 14th, 1902. Was the Supreme Court coincidentally following Knox's lead?

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The Sixteenth Amendment Fraud

President Reagan has fairly well characterized the noxious nature of the present income tax system as "utterly impossible, utterly unjust and completely counterproductive." Most Americans would agree. There are, however, some Americans who would agree emphatically with the President that the system has "earned a rebellion, and it's time we rebelled." Those are the Americans for whom the "utterly unjust" aspects of the income tax system aren't just words, but bitter experiences.

In a recent case involving the enforcement of the Internal Revenue Code, *United States v. Kilpatrick*, 575 FSupp 325 (D.CO, 1983) and its related case, *United States v. Kilpatrick*, 594 FSupp. 1324 (D.CO, 1984), the Internal Revenue Service and several federal prosecutors demonstrated some of the raw power which has, in the past, brought its victims to their knees, both literally and figuratively. The *Kilpatrick* case was so fraught with brutish attempts to destroy Mr. Kilpatrick that it was the subject of a feature story on the television program, *60 Minutes*.

The attorneys for Kilpatrick, including a former U.S. Attorney, had carefully worked out the tax implications for the company and its investors. His total outlay to get a legally airtight tax shelter was $1.8 million. A Congressional investigator called his shelter one of the "most clean cut, legitimate kind." Despite his legally correct position, the Internal Revenue Service embarked upon a completely illegal and unlawful adventure in citizen harassment which culminated in the prosecution of Mr. Kilpatrick on 27 counts of various tax-related "crimes," and the prosecution of several other innocent victims.

During the course of the prosecution, the U.S. Attorneys told Kilpatrick and his attorneys that they intended to destroy him. Apparently, they had intended to do so without any legal grounds. They even stooped so low as to pick through Kilpatrick's garbage to obtain evidence against him.

District Court Judge Winner called some of the circumstances of the case "bizarre"; see 575 FSupp, at 327. He then went on to say that the prosecutor was guilty of misconduct by injecting "his personal belief concerning the facts of the case", by "unfairly cross-examin[ing] witnesses", and by abusing "the reliance of a grand jury on a prosecutor." Judge Winner was stupified at some of the abuses in which the prosecutor had engaged in an attempt to undermine the grand jury considering *Kilpatrick*.

Among the specific abuses in *Kilpatrick* which Judge Winner mentioned were:

1. the adulteration of grand jury transcripts; see 575 FSupp, at 328;
2. the swearing in of an I.R.S. criminal investigator as "agents" of the

3. the administration of oaths by U.S. Attorneys without any authority to do so; *ibid*;

4. misleading the grand jury; *ibid*;

5. intimidation of witnesses; see 575 F.Supp, at 333;

6. the involvement in unlawful investigative work by the prosecutors; see 575 F.Supp, at 336;

7. improperly "tailing the little girls and quizzing the wife" of the defendant with the knowledge that questioning of either would be disallowed "in court because of an absolute privilege"; *ibid*;

8. the use of a U.S. Attorney as an undercover prosecutor and investigator; see 575 F.Supp, at 337;

9. the attempted intimidation of Judge Winner; see 575 F.Supp, at 338;

10. violations of the rule forbidding "expressions of personal opinions by counsel as to whose testimony they believe"; see 575 F.Supp, at 341;

11. creation of "an atmosphere of unfairness and overreaching illustrated in small degree by ex parte telephone calls to my law clerk made by government counsel inquiring through the back door to learn my thinking as to some legal situations in the case'; *ibid*;

12. "the most ridiculous demand I have ever heard in the almost 50 years since I graduated from law school," made by one of the prosecutors that Judge Winner "instruct the jury to 'cease its deliberations' until he could have [an additional] hearing" on additional issues, the demand being made *ex parte* by telephone; *ibid*.

Judge Winner stated, *ibid*, that the *Kilpatrick* case had its "first questionable conduct during the opening two minutes of grand jury investigation and which had conduct suspect under the Canons of Professional Responsibility lasting into post trial hearings."

In the subsequent hearing on the merits of the indictment, the companion case, *United States v. Kilpatrick*, 594 F.Supp. 1324 (D.CO, 1984), it was held, at 1325, by District Court Judge Kane that:

> [The] indictment [of Kilpatrick] had to be dismissed because of [the] totality of [the] circumstances, which included numerous violations of [the] federal criminal rule pertaining to grand juries, violations of statutory witness immunity sections, violations of Fifth and Sixth Amendments, knowing presentation of misinformation to the grand jury and mistreatment of witnesses.

Judge Kane went on to describe even further the abuses which occurred in Mr. Kilpatrick's case:

1. "dozens of proceedings before the grand jury" were not transcribed and the complete transcriptions were never given to the defendants as required; see 594 F.Supp. at 1327-28;

2. an "IRS agent assigned to the civil division and who the prosecutors relied upon as an expert was also sworn in as an 'agent of the grand jury'"; see 594 F.Supp. at 1328;

3. the independence of the grand jury was compromised when it was "urged to rely upon the IRS special agents as their 'agents'"; see 594 F.Supp., at 1328-29;

4. the I.R.S. special agents wrongfully informed witnesses which they interviewed that they were "assisting a grand jury investigation in the Judi-

grand jury. Rather, they viewed their role as agents of the Department of Justice, not the grand jury"; *ibid*;

5. prosecutorial responsibilities were wrongfully given over to the I.R.S. special agents; see 594 F.Supp., at 1331;

6. "the evidence suggests that information was disclosed to other IRS agents for use in civil cases. Grand jury secrecy was repeatedly breached by those with a duty to remain silent and secrecy obligations were imposed upon others of whom the law does not require confidentiality"; see 594 F.Supp., at 1331;

7. the I.R.S. agents admitted that they had an "institutional intent to take advantage of the grand jury investigation in the civil audits"; see 594 F.Supp., at 1332;

8. the grand jury was manipulated "to obtain evidence for eventual civil use by the IRS"; see 594 F.Supp., at 1332;

9. according to "Richard Birchall, a former attorney with the Department of Justice . . . '[t]here was a vengeance to the manner in which [the prosecutor] conducted the investigation'" exhibited in the federal prosecutor's threat to make the defense against his charges excessively expensive to the defendants, even if a conviction were not obtained; see 594 F.Supp., at 1333;

10. an "infusion of hostility and vitriol which permeate[d] this entire case" was attributed "to the frequently rude, consistently arrogant, and occasionally obnoxious conduct of some of the government attorneys assigned to the prosecution of this case"; see 594 F.Supp., at 1333-4;

11. the targets of the grand jury investigation were publicly identified by the I.R.S.; see 594 F.Supp., at 1334-35;

12. willful and knowing violations of procedure concerning secrecy obligations; see 594 F.Supp., at 1335;

13. the federal prosecutors used a procedure described as "the 'damnable practice' of bestowing 'informal immunity' through 'letters of assurance' in order to get around "the federal immunity statute (18 U.S.C. [secs.] 6001, *et seq.*) which prescribes the congressionally authorized procedure for conferring grants of immunity"; see 594 F.Supp., at 1336 & 1337;

14. the federal prosecutors, in deciding to stop the illegal procedure described in 13., replaced it "with the equally abusive and dubious practice of calling witnesses who had not been issued letters and having them invoke their Fifth Amendment privilege before the grand jury regarding the targets and the transactions under investigation; knowing in advance that they would do so" in order to prejudice the members of the grand jury against the defendants; see 594 F.Supp., at 1338, 1339 & 1349;

15. suppression of evidence from the grand jury; see 594 F.Supp., at 1341;

16. deceiving the grand jury; *ibid*;

17. browbeating an expert witness before grand jurors; see 594 F.Supp., at 1343;

18. "the unidentified use of questionable hearsay information with regard to vital issues [which intruded] upon the independent role of the grand jury . . . [and caused] 'improper influence and usurpation of the grand jury's role'"; see 594 F.Supp., at 1349-50;

19. "The prosecutor's actions here were premeditated and prompted by the expectation that the worst that would become of his constitutional violations would be a limited suppression of evidence"; see 594 F.Supp., at 1350;

Judge Kane concluded by saying, at 1352-53, that:

cise independence. The numerous abuses and violations of rules and constitutional principles must be considered particularly serious because of the admissions in these hearings that, for the most part, the activity was undertaken knowingly and purposefully.

* * *

There is no doubt that the indicting grand jury was usurped and that time-honored constitutional principles were sullied.

Some of the violations, standing alone, require dismissal. Others, while not singularly requiring dismissal, when combined with one another amount to **travesty**. What is perhaps most alarming is that even in the very last of so many hearings, one of the prosecuting attorneys continued to refer to the challenge to his and his colleagues' conduct as "silly" and "frivolous." (emphasis added)

Judges Winner and Kane didn't think the prosecutorial misconduct in *Kilpatrick* was either "silly" or "frivolous." The blatant attempt to subvert the grand jury was criminal. But even subtle attempts to subvert the grand jury, which are more dangerous, must be considered equally as serious. According to Judge Winner, 575 FSupp., at 327:

[A] grand jury has a duty to protect the innocent and I emphasized that a grand jury is an independent body, separate and apart from investigative agencies and that grand juries are not an arm of the prosecution but instead, they have a duty to examine the government's case carefully. I didn't tell them that they couldn't appoint IRS agents as their own "agents", because it never occurred to me that there could be such a blurring of the "investigative agency", "prosecuting attorney" and "grand juror" functions.

Just as the English grand jury was independent of the king, the federal grand jury under the United States Constitution is independent of the United States Attorney, the prosecutorial agent of the executive branch of the federal government. The grand jury is not an arm of the Federal Bureau of Investigation; it is not an arm of the Internal Revenue Service; just as it is not an arm of the United States Attorney's Office.

In what amounted to an attempt by the federal prosecutors involved in the case in Judge Winner's court to coerce West Publishing Company (which publishes all federal district court opinions released for publishing) into refusing to publish Judge Winner's scathing opinion in *Kilpatrick*, Judge Kane described some of these shenanigans as "bizarre episodes of procedural novelty"; see 594 FSupp., at 1327. William Kilpatrick shelled out $3.75 million to defend himself from that "bizarre" behavior.

What is unstated about the criminal behavior of the federal prosecutors and the I.R.S. agents in *Kilpatrick* is that almost all federal income tax cases involving individuals are carried on with similar bending of the rules and statutory requirements which are laid upon the conduct of prosecutions, similar prejudicial suppression of evidence, deception of both grand and trial juries and exhibitions of extreme hostility toward such defendants. *Kilpatrick* was unusual in that such improper and/or illegal behavior on the part of federal prosecutors is generally condoned by federal judges. Federal prosecutors are ordinarily more careful than those who participated in *Kilpatrick*, not committing nearly the number of abuses, but very few federal

In case after case, I.R.S. agents oppress citizens unlawfully and no punishment is ever meted out for these crimes; nothing of any significance has yet been done to any of the federal prosecutors or to any of the I.R.S. agents who criminally attempted to destroy William Kilpatrick. With or without a Constitutional foundation for the tax statutes, these abuses are immoral and unlawful. Nevertheless, I.R.S. agents continue to arrogantly ignore the basic human decency required of all people and to willfully violate the rights of Americans with the cooperation and approval of federal judges and prosecutors.

The abuses of which the I.R.S. and its employees are guilty range from simple negligence to outright assault and battery.

On May 17, 1985, it was reported that the National Treasury Employees' Union (of which I.R.S. employees are members) accused the I.R.S. of destroying 63,000 letters from California taxpayers. A single I.R.S. employee in the Austin, Texas, office destroyed case files, including receipts, from 6,000 businesses because she was falling behind in her work. In April of that year, despite I.R.S. Commissioner Roscoe Egger's false assertions to the contrary, thousands of income tax returns were shredded in the Philadelphia Service Center because of their inability to meet deadlines; see *USA Today*, page 3A, May 17, 1985, and *The Seattle Times*, April 27, 1985. As many as 27,000 returns may have been shredded along with the disappearance and hiding of thousands more. The federal General Accounting Office reported that, as a result of the Philadelphia fiasco, as many as 150,000 delinquency notices, levies and liens were sent out. The G.A.O. also reported that returns had been tampered with in the Philadelphia center; see *The Washington Post*, page D3, April 30, 1985. In addition, thousands of delinquent notices were sent out and levies placed because of an I.R.S. failure to record withholding-tax payments for 26,756 corporations in the mid-Atlantic region; see *The Washington Post*, April 29, 1985.

From I.R.S. internal documents obtained under the Freedom of Information Act, it was shown that, between April, 1984, and May, 1985, an I.R.S. clerk hoarded 40 bags of mail at her home, including more than $800,000 in taxpayer checks; in late 1983, an I.R.S. employee in Atlanta attempted to flush records of deliquent taxpayers down a toilet; in January, 1984, an I.R.S. revenue officer in Greensboro, North Carolina, was discovered falsifying documents to cover up the embezzlement of $5,411.82. This last I.R.S. employee was also believed to have been destroying returns; see *The Philadelphia Post Register*, November 4, 1985. Through either malfeasance or negligence or incompetence, an estimated one million refunds had not yet been mailed out at the end of September, 1985, five months after the filing deadline, according to I.R.S. figures brought to the public by the same agency whose boss had earlier said that charges against his agency were "sheer, utter nonsense." At least 18,597 taxpayers were still awaiting refunds from the Philadelphia service center on October 24; see *The Philadelphia Inquirer*, P-1, November 4, 1985 & *The Washington Post*, P1-2, November 5, 1985.

But such demonstrations of anti-paperwork attitudes aren't especially surprising given the cavalier attitude that the I.R.S. and its employees regularly exhibit to flesh and blood humans who have far superior rights to paperwork. If these acts hadn't caused such frustration and anger for so many, they could conjure up frantic visions of Keystone Kops. However, these are only the mildest of the abuses which the I.R.S.

nue agents swooped down upon the Englewood Learning Center, a small family-run, day-care center in Allen Park, Michigan, run by Marilyn Derby. These latter-day storm troopers claimed authority under a Notice of Seizure for unpaid withholding taxes and proceeded to take over the center, which was occupied by about 30 children and several center employees, including teachers. Shortly after their arrival, the agents had changed all the locks in the center in order to prevent the re-entry of Mrs. Derby who had stepped out for a doctor's appointment.

When Mrs. Derby returned, she had to knock on the door to gain entry. Once inside, she noted that a card table and chairs had been placed by the doorway of the room where the children had been herded by the I.R.S. agents. All the employees were very upset and one teacher was crying because of the rude treatment received from the I.R.S. agents. Mrs. Derby had been negotiating with one of the agents, Tashia Turner, who had invaded the center. Ms. Turner ordered Mrs. Derby to calculate the total amounts due Englewood by each of the parents whose frightened children were waiting to be picked up to go home.

Parents were met at the door by one of the I.R.S. agents who escorted them to the card table to settle their bill before their respective children were released to them. The parents were made to believe that they had to come to some kind of settlement before they could get their children back. The babies were segregated and held in a room guarded by one of the I.R.S. agents. As each parent came to claim his or her child, Turner called out the parent's name and Mrs. Derby calculated the amount due. One distraught parent was visibly shaken as she frantically scrounged for change from her purse to pay off the remainder of her bill. In a short time, the I.R.S. collected almost seven times the normal daily intake for the center. The parents had been instructed to pay the I.R.S. directly in either cash, check or promissory note.

The older children above infancy had been making Christmas decorations when the revenue agents broke into the school and ordered them to "drop their scissors." These children were ordered to congregate in a single room so that they could all be more easily watched by the agents. The I.R.S. agents had ordered the staff to move the babies into the same room, but they refused because of the lack of diapering tables and cribs in that room. All the doors were guarded, including the bathrooms, possibly to prevent any of the children from coming to harm. One of the children "rode over the foot of one of the agents with a toy truck. The agent got angry and picked up the child's truck and threw it across the room and told the little boy not to do it again." Fortunately, the child did not come to physical harm.

One of the parents complained about the seizure to Congressman Dingell. Dingell asked the I.R.S. to provide his office with a report on the incident. Quickly responding to the Congressman's request, two I.R.S. internal investigators, named Boyd and Doak, visited Mrs. Derby in January, 1985. They exposed their guns for Mrs. Derby and intimidated her into signing an affidavit on an I.R.S. form upon which Mrs. Derby had written the words, "To my knowledge no child was denied access to their parent" which had been dictated to her by the investigators. Mrs. Derby learned later that the parents were also contacted by these same agents who conducted interviews under similar conditions, i.e., exposed guns, dictated affidavits, etc. (From the *Notarized Affidavit* of Marilyn Miller Derby, Day Care Center Director & the *Idaho State Jour-*

Idaho through the efforts of former Congressman George Hansen, the I.R.S. district director in Boise, Idaho, William M. Jacobs, claimed the story had been distorted and that Hansen had "chosen to ignore the truth to serve his own needs." Jacobs asserted that most of the revenue officers involved in the seizure were women, with children of their own and that "[t]hey were sensitive to the impact their official actions might have on the children and parents"; see the *Idaho State Journal*, October 22, 1985. That seems to be perfectly true. Apparently, when I.R.S. agents become less "sensitive," they don't just expose their guns, they pull them out and point them at their victims.

In 1981, a group of at least two dozen, including U.S. marshals, state patrolmen, IRS revenue officers and IRS special agents, some of whom were brandishing M-16 automatic rifles, shotguns and sidearms, surrounded the Maryland home of the Amish Snyder family, taking up positions near the house, Mr. Snyder's workshop and along the highway. According to Mr. Snyder, while he was working in his shop, "The door flew open. A whole bunch of 'em busted in. They pointed their guns at me and shouted: 'Halt, we're here to seize.' I said: 'Go to it, boys.' They had their guns on me."

In a coordinated attack on the Snyder residence, another group of armed officers broke into the house and confronted Snyder's wife, Hallie, and their 4-year-old-daughter. They proceeded to rifle every room in a search for cash. The Snyder family's neighbors who had gathered to record pictures of the travesty were treated to the same less "sensitive" Gestapo tactics and ordered to leave at gunpoint.

The justification for this raid was a disputed $890 income tax liability which the I.R.S. had managed, with their usual tortured arithmetic, to stretch to $48,000. In response to a query about the necessity to launch a blitzkrieg on the Snyders, an I.R.S. spokesman said such actions were take "[t]o ensure the protection of the taxpayer, his family, the private vendors we hired to move the equipment, and innocent bystanders."

Obviously, the I.R.S. did a much better job of protecting the Snyders and their neighbors than the children at Mrs. Derby's day-care center. Nobody was run over by a toy truck. (From *Parade Magazine*, front page story, April 12, 1982 & the *Idaho State Journal*, October 22, 1985.)

By no means was this gunplay isolated. On July 2, 1985, the I.R.S., in what was later claimed to be an attempt to seize property for back income taxes, sent two agents, who claimed to be a Mr. and Mrs. Gonzales, to the home of Lavell Bassett in Soda Springs, Idaho. The agents had phoned Bassett to say that they wanted to buy Bassett's home even though Bassett told them that it wasn't for sale. The "Gonzales'" insisted on coming over to inspect the Bassett house. Suspecting trouble, Lavell called his brother, Dave, and some other friends, asking them to drop by.

When "Mr. and Mrs. Gonzales" arrived, they were warned to stay off the property by Bassett. Dave Bassett was standing on the sidewalk fronting the house when the couple arrived. A van and several cars had parked close by. When the couple advanced despite Lavell's warning, "Mr. Gonzales" tripped when Dave Bassett attempted to block his path. "Gonzales" yelled, "Vic, Vic, come and get 'em!" as he fell. At that point, at least 13 men brandishing weapons came out of the van and the cars. There were many women and children present.

Dave Bassett was pushed to the ground at the point of a shotgun and then his hands

were questioned by Assistant U.S. Attorney John Runft, the U.S. Attorney decided to drop the charges.

In later interviews, the U.S. Attorney's office admitted to a television reporter that such tactics were "not unusual in any federal investigation" and that they were "for precautionary measures." Precautionary measures? Perhaps in case the agents had to kill Bassett? (From a television newscast on KPVI, Channel 6, in Pocatello, Idaho, on July 5, 1985.)

Sometimes, the I.R.S. doesn't resort to kidnapping children or waving their shotguns in the faces of people whom they are trying to persuade to pay income taxes. Sometimes, they just smash the window of an unwilling taxpayer's car and pull her through the window and across the sidewalk, jagged glass and all. That's how the I.R.S. levied upon Stephen and Mona Oliver of Fairbanks, Alaska, although Mona could certainly claim to have taken the brunt of the levy. The enormous sum which the I.R.S. claimed from the Olivers? $4700. (From *Parade Magazine*, front page story, April 12, 1981, "Taxpayer Safeguards", Serial 97-81, Ninety-Seventh Congress, Second Session, Transcript (Vol.XIV, No. 7) of the November 15, 1981, "*60 Minutes*" program entitled "Pay Up or Else" & a statement by Phoenix Attorney Donald MacPherson, a witness to the Fairbanks, Alaska Volkswagen seizure by the IRS.)

A far more wide-ranging threat has already been put into motion by the I.R.S. On September 21, 1981, I.R.S. Assistant Regional Commissioner for the Central Region, D.L. Stewart, sent a memorandum to all of the other assistant regional commissioners for examination in the United States which signalled the launching of a national attack on distributors of Amway products. Stewart's memorandum accused Amway distributors of using "schemes" to reduce their taxable income. The memorandum further claimed that a substantial loss of revenue (to the I.R.S.) had been the result of their "non-compliance with the law." Paul J. DesFosses, an ex-I.R.S. agent of twenty years, said that "what appears to have occurred is that the IRS found no errors or omissions which would justify an audit of Amway distributors; these individuals were targeted for audit solely because they were small business Amyway distributors who were self-employed." DesFosses also revealed that, "The IRS is in the midst of a massive campaign to try to destroy small businesses. The IRS, according to its own documents, views virtually all small businesses—which comprise a large, vital part of the American economy—as 'schemes' to avoid paying taxes." Furthermore, DesFosses said that the Amway distributors were "audited solely because their names had been placed on an IRS hit list"; see *Freedom*, October, 1985, at 34. Many similar organizations which generate business through home sales are also targeted for I.R.S. harassment. DesFosses went on to charge that the I.R.S. has classified perfectly legal, legitimate businesses as illegal, claiming violations of tax laws. DesFosses concluded that, "The IRS is apparently viewing any individual who is not an employee of a large corporation or an agency of the government as somehow deviant and a threat to its tax collection system"; see *Freedom*, at 36.

Clearly, it was no overstatement when U.S. Senator Paul Laxalt (R-Nev.) said that the I.R.S. is "an agency totally out of control, running roughshod over the taxpayers and making a joke out of our rule of laws" and that "[t]he high-handed bureaucratic excesses of the IRS are a national disgrace"; see *Parade Magazine*, page 6, April 12,

which stated:

> The evidence collected by the Commission suggests that serious problems exist in currently established procedures for collecting taxes due.
>
> The collection arm of the IRS combines the ruthlessness of a creditor with the power of the state.... Current IRS collection powers are extremely broad, and the use of even the most drastic measures is limited only by IRS discretion. In many cases, it appears that the seizure power is used indiscriminately, on the theory perhaps that half a loaf is better than none. Premature seizures, however, not only disrupt the taxpayer's whole life, but also deprive him of the power to use a seized business to pay his obligation gradually, or to raise money to contest the seizures in court. Furthermore, the breadth of the collection power makes it possible for the IRS to negotiate oppressive payment agreements even with taxpayers whose assets are not seized.
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> * * *
>
> [A Senate] Subcommittee found that the IRS 'violates its own formal policy by taking excessive and harsh enforcement actions against small businesses.' The Chairman of the Subcommittee, Senator Carl Levin, stated that '[t]he IRS is supposed to be in the business of collecting money, not seizing small business assets just for the sake of seizing something. But that's what we found.'
>
> On CBS "*60 Minutes*", Senator Levin stated further:
>
> There is no reason why, in this democracy of ours, we have a little Kremlin that goes on and on, as far as I'm concerned, without adequate controls....
>
> (From Transcript (Vol. XIV, No. 7) of the November 15, 1981, *60 Minutes* program entitled "Pay Up or Else"")

To the contrary, there is a reason why we have "a little Kremlin" in this great land of the free. The Soviet Union had its beginnings in what was claimed to be a revolutionary concept. That concept turned out to be not so revolutionary; slavery is not revolutionary. And slavery is exactly what the I.R.S. and those who support that agency's extreme behavior have in mind. According to Paul DesFosses, "Behind the conciliatory rhetoric of Commissioner Egger, is a plan to take control of the lives of every citizen in this country. If the IRS is not quickly brought under control, we will find ourselves living Orwell's 1984 before anyone realizes what the agency is actually doing"; see *Freedom*, at 36. To see what the I.R.S. is actually doing, it might be very instructive to what the Internal Revenue Service has done, going all the way back to its beginnings which came long before the Sixteenth Amendment was a beam in Philander Knox's eye.

* * *

The Internal Revenue Service was created on July 1, 1862, as an administrative agency for the collection of an income tax which was signed into the statute books by President Lincoln at the same time. These taxes were passed as an emergency measure for the funding of the Civil War. The war had not reached a critical stage on the field, but the maintenance of General George McClellan's huge army in training had to be financed nevertheless. A similar tax measure had been passed the previous year, but without a new federal organization for its collection.

tax would inevitably lead to a disagreeable, offensive inquisition into private affairs by those officers. In a comparison between the system used by Great Britain and other nations, Chase asserted that the British system taxed few articles or sources with relatively light assessments, whereas the American version would necessarily be laid upon a much larger number of articles. Chase had preferred to finance the war through loans. However, whatever the Secretary felt about the tax measure, he went ahead with its imposition once passed. His political associates, the so-called Radical Republicans, also called the Jacobins, were determined to crush the South and that would require a great deal of financial support. That support would have to come from only the Northern States and would result in a burden upon taxpayers previously uncontemplated in the nation's history.

Accordingly, Secretary Chase asked for recommendations about the administration of the Internal Revenue Service. The recommendations received were categorized in two classes by the Registrar of the Treasury under Chase; see L. E. Chittenden, *The Recollections of President Lincoln* (Harper & Brothers, New York, 1891), at 345:

> One class proceeded upon the assumption that men were naturally dishonest, and that they would regard a fraud upon the United States as an evidence of shrewdness rather than a crime, as a credit rather than a stigma. The other insisted that the nation was now experiencing a grand and most creditable development of patriotism, which led it to regard the payment of necessary taxes as a duty, and which would no more tolerate frauds upon the Treasury than it would any other form of treason.
>
> The first of these classes consequently proposed an internal revenue system which should enforce the collection of taxes by heavy fines, penalties, and forfeitures, which should be divided with informers and spies. As these informers would require instruction in their labors, in order to become experts, they proposed a bureau of detectives in the Treasury, presided over by a chief, with such a number of subordinates as should be found necessary, all to be salaried officers of the United States.
>
> The general plan of the second class proposed considerable rewards for prompt returns and payments, in deductions from the amount of the tax. Their principal reliance, however, was upon the honesty of a patriotic people, who, if properly encouraged by the Treasury, would constitute a great army of unpaid agents for the collection of the taxes, besides paying their own, since no man who bore his own share of the burdens of war would permit his neighbor to escape from the same burdens by fraud or dishonesty. This plan wholly dispensed with detectives and paid informers.

Chittenden, the Registrar of the Treasury, argued that "the employment of an army of detectives was inconsistent with the dignity of the government, and would exert a corrupting influence upon the people"; *ibid.* Chittenden asserted, from his own experience, that professional detectives were highly untrustworthy and, because they dealt in "deception and falsehood as the tools of their trade, [were] incapable of distinguishing them from truth, so that [they] would use either, as at the moment seemed most expedient." In other words, the result of using such men as collection agents for the internal revenue would be an organized army of inveterate liars; see Chittenden, at 344, further argued:

> Such a man's mind was not likely to be controlled by conscience, nor were

involve a constant exercise of the opposite qualities. It was also stated that the people, knowing that such agents were employed by the Treasury, would infer that honesty and integrity were no longer appreciated, and would lose all interest in the honest execution of the laws, concluding that, as they got no credit for fair payment of their taxes, they might just as well evade them whenever they could. The results would necessarily be a general demoralization of the public service and a thorough corruption of the public mind.

It shouldn't be too hard to guess which recommendation was followed by Chase. We've been living with his malicious decision ever since; see Chittenden, at 345:

> [T]he first internal revenue act of 1862 was framed upon the theory that the taxpayers were **the natural enemies of the government**, who would avail themselves of every opportunity to defraud it, and evade the payment of their taxes. The laws for the collection of duties upon imports were amended so as to conform to the same theory. Heavy penalties were imposed by the internal revenue and the tariff laws, which were to be enforced by the official power of the United States, but the penalties, when collected, were to be divided between the government and the informers. **Statutes were enacted which gave to irresponsible detectives powers of visitation and inquisition into the business of the citizen which were intolerable enough to have provoked a revolution if the country had not been already involved in war.** (emphasis added)

The provisions for dividing the spoils of assessments between revenue agents, officers and informants continues to this day, codified in I.R.S. rules and regulations. The provision for inquisitorial abuses is no longer quite so explicit, but the venerable tradition is still honored in practice by I.R.S. agents.

At that time, the Detective Bureau, or the National Detective Police (N.D.P.), was not placed under the control of the newly created office of the Commissioner of Internal Revenue, but actually became a staff function of the Secretary of War instead, being directed by Edwin M. Stanton. George S. Boutwell, a Radical Congressman from Massachusetts, was appointed the first Commissioner of Internal Revenue, serving from July 17, 1862, to March 4, 1863.

The first chief of the N.D.P. was a detective named Lafayette C. Baker. Under questionable authority, Secretary of War Edwin Stanton, the Radical Republicans' primary ally in President Lincoln's cabinet, extended Baker's jurisdiction to the army, bestowing upon him the rank of Colonel with all the attendant insignias and uniform. Through Stanton's office, Baker exercised his authority in all the departments of the government and throughout the United States, having been given the authority to command army troops to aid his agents in the collection of the tax.

Baker recruited virtually anyone who suited his fancy without recommendation, investigation, or any inquiry. He claimed at one point to have had over two thousand agents under his command, although no one in the Treasury Department was keeping track. Baker proceeded to blaze a trail which all I.R.S. agents apparently try to emulate; see Chittenden, at 346:

> With this force at his command, protected against interference from the judicial authorities, Baker became a law unto himself. He instituted a veritable **Reign of Terror**. He dealt with every accused person in the same man-

> son to suggest to Baker that a citizen might be doing something that was against law. He was immediately arrested, handcuffed, and brought to Baker's office, at that time in the basement of the Treasury. There he was subjected to a brow-beating examination, in which Baker was said to rival in impudence some heads of the criminal bar. This examination was repeated as often as he chose. Men were kept in his rooms for weeks, without warrant, affidavit, or other semblance of authority. If the accused took any measures for his own protection, he was hurried into the Old Capitol Prison, where he was beyond the reach of the civil authorities. Baker's subordinates in other cities emulated and often surpassed the example of their chief. Powers such as they exercised were never similarly conferred by law under any government claiming to be enlightened. (emphasis added)

Such powers were, of course, not conferred by law in the United States either. But that little problem didn't stop Baker, nor has it stopped any I.R.S. agent since.

The abuse of power by Baker's men, consisting of Fourth Amendment violations of search and seizure and Fifth Amendment violations of due process, inevitably led to corruption in the form of bribe-taking. While those who engaged in illicit distilling, bounty-jumping, smuggling, defrauding the customs, and other similar practices were overlooked by the N.D.P. in exchange for payoffs, "honest manufacturers and dealers, who paid their taxes, were pursued without mercy for the most technical breaches of the law, and were quickly driven out of business. The dishonest rapidly accumulated wealth, which they could well afford to share with their protectors. Good citizens became discouraged, and ceased to take any interest in the administration of justice, or the suppression of fraud. The worst predictions of the opponents of the detective system were speedily verified"; see Chittenden, at 346-47.

Befitting a man of substantial means, Baker preferred living at the best hotels and flaunted his wealth. He even had an office in New York at the prestigious, and expensive, Astor House, from where he ran a side business of shanghaiing army deserters back into the army for bounty.

In one incident related by Chittenden, Baker conspired to involve Chittenden in a scheme to incriminate a clerk in the Treasury. Baker handed the Registrar a letter, claimed to have been intercepted by Baker and alleged to have been written by the clerk, which announced the clerk's intention to escape to Havana to avoid prosecution for criminal behavior. Baker demanded a warrant for the clerk's arrest based upon the letter. Before acting, Chittenden compared the handwriting on the letter with that of a sample of Baker's handwriting. Chittenden then asked, "Colonel Baker, do you not think both these documents were written by the same hand?" "Perfectly unabashed, without a blush, [Baker] smiled as he looked [Chittenden] in the face and said, 'That game didn't work, did it? It was a good one, but the best plans will sometimes fail. If I could have got your consent to an arrest, I would have had their confessions before morning. We must now try another plan.'" Chittenden then literally kicked Baker out of his office; see Chittenden, at 348-50.

In a similar incident, Baker tried to falsely incriminate clerks in the Department of the Navy. Baker visited Gideon Welles, Secretary of the Navy, on February 1, 1864, disgorging "a sprawling mass of suspicions . . . implicating persons above suspicion." Welles' opinion of Baker was that he was "wholly unreliable, [and that] regardless of

Riverside Press, Cambridge, 1911), at 518-19.

One of Baker's deputies was William P. Wood, warden of the Old Capitol Prison where Baker deposited most of his victims and where they were clapped in irons while being interrogated mercilessly for weeks without the least benefit of counsel. The irons regularly employed by Baker were not the garden-variety handcuffs sporting a chain between a pair of wrist manacles normally seen on television police shows. The Old Capitol Prison used irons which consisted of a wide bar, about a foot long, to which the wrist manacles, equally wide, were permanently and rigidly attached. Leg irons were also frequently employed with a heavy, basic black ball and chain accessorizing the outfit.

William P. Wood was an interesting member of Secretary of War Stanton's tight circle of confidantes. Wood's qualifications for the job weren't readily apparent; he was originally a maker of wooden models and patterns. On February 13, 1862, however, Stanton handed Wood a secure, well-paying job for which he had absolutely no experience. Wood was one of Stanton's most devoted aides; see Otto Eisenschiml, *Why Was Lincoln Murdered?*, (Little, Brown & Company, Boston, 1937), at 190-91. When Stanton died in 1869, Wood's capabilities were no longer highly valued and he rapidly fell out of favor.

On December 16, 1897, Wood swore out an affidavit in which he admitted his part in a plot to defraud Cyrus H. McCormick of his right to a patent on his famous reaper. Frank A. Flower, Stanton's biographer, aided in the preparation of the affidavit. Stanton, as an attorney in private practice, represented McCormick's opponent in the patent suit. Wood's talents with wood had been put to use in secretly changing the parts of the reaper used to challenge McCormick. McCormick's opponent was almost blind and couldn't see that his own invention had been altered by Wood to conform to Stanton's position. Stanton was assisted on the case by Peter H. Watson, a patent attorney, who was appointed Assistant Secretary of War under Stanton. Stanton was obviously impressed with Watson's qualifications in much the same manner that he was impressed with Wood. A draftsman involved in the fraud, was promoted to the rank of major and made Stanton's confidential secretary; see Eisenschiml, at 191-92. Wood's affidavit contained the incredible disclaimer that Stanton and Watson had no knowledge of his fraud.

According to Chittenden, the Internal Revenue Service collection process, as administered by Baker, "created a class of criminals" which, in a classic case of protecting one's own job security, seemed to require the continued existence of Baker's organization, as conspicuously lacking in integrity and principled behavior as it was; see Chittenden, at 351.

With Chase and Stanton vouching for him, Baker and his revenue agents proceeded to spread ill will all over the South. In cooperation with cotton speculators, I.R.S. agents abused their authority by forcing the army to harass civilian cotton farmers, sometimes seizing their cotton crops two and three times. Welles believed that Chase allowed Baker to terrorize the South for political power, currying favor with rich and powerful cotton traders in the North; see Welles, Vol. II, at 33-34.

Following the end of the Civil War, the hostilities continued against the vanquished Southerners, white and black alike. Black farmers were still being treated like slaves

was overrun by "swarms of treasury agents."

> No distinction appears to have been made by them between property legally subject to confiscation and property that was not. These agents often united with native thieves and plundered the country of the little that was left in the way of supplies, cotton, tobacco, corn, etc. The statistics show that the Government profited nothing by the confiscation: it has given back to the owners nearly all it received; but most of the proceeds went into the pockets of the agents.

Documentary History of Reconstruction, edited by Walter L. Fleming (McGraw-Hill, Inc., New York, 1966), at 4.

Suspicions of corruption on the part of the I.R.S. agents was universal, most of it well justified, and some estimates of actual revenue sent on to Washington, D.C., were as low as 10%. Others felt that was a generous figure. The reasons were two: one, greed; and, two, the sheer number of co-conspirators in corruption; see Fleming, at 28. According to T. J. Mackay, the U.S. Provost Marshal assigned to Louisiana:

> After the arrival of the officials of the Treasury Department in western Louisiana I heard frequent complaints made of their exactions. At first I did not credit those complaints, as the office is essentially an odious one. Upon further and diligent inquiry I ascertained that it was the common practice of the agents of the Treasury Department to seize cotton on the pretext that it belonged to the late Confederate States; to refuse to give the party who owned the cotton a paper designating the weights of the bales, and consequently return to the claimant the same number of bales taken from him, after abstracting from them the third or half of the cotton. In other cases the Treasury agents would refuse to respect the permits given by their predecessors to ship cotton, but exact bribes before they would permit it to be shipped. In other cases they would refuse to give any permits whatever to ship cotton, but employed certain parties to buy it at a reduced price.
>
> * * *
>
> These acts are performed for the private advantage of the agent, and to the injury of the government, because the citizen refers the oppressive act to the government, and not to the unfaithful agent. And it becomes the pretext for turbulence and disorder.

Fleming, at 30-31. The turbulence and disorder manifested itself in "a murderous ill-will which too commonly vented itself upon soldiers and negroes"; Fleming, at 31. And, while the poor Southerners were being financially mugged by the confiscatory taxes and the brutal abuses of I.R.S. agents, the merchants in the North became richer; Fleming, at 34-35. These oppressive practices were in execution of the plan of the Radical Republicans in Congress to crush the South and turn it into a fiefdom for the North.

Secretary of War Stanton placed a great deal of responsibility upon Baker, trusting him with the direct brutalization of poor Southerners with the aid of the occupying army, as well as with carrying out some of the Secretary's most delicate plots. It was through Baker, as head of the Secret Service, that Stanton sent spies, not to spy on the Southerners, but, into the military camps of the Northern armies in order to make sure that his generals were sending him correct information. The Radical Republi-

command of the brilliant field marshal, General Robert E. Lee. In fact, the Radicals expressed the opinion that it would be better to fight and lose than to do nothing, so that at least the people in the North would be roused to support their cause to obliterate the South by a desire for vengeance. McClellan, however, played into the hands of the Radicals by his reticence to take any military action against the nearby Confederate capitol at Richmond, Virginia. McClellan, in fact, was prominent in the Washington, D.C. social scene during that period. Because of his fellow Radicals' rabid bloodlust with the accompanying increased public grumbling about McClellan, Stanton committed acts of espionage worthy of the Soviet KGB upon his own generals because his Radical allies believed that the Union generals in the field who had Democratic leanings would lie to Stanton about battle conditions.

These early I.R.S. practices of informing upon, spying upon and conspiring to incriminate American citizens have not stopped. The I.R.S. has consistently and unremittingly been at the forefront of a program of planned and purposeful espionage upon all the citizens of this nation, not just known criminals, in a determined undermining of our privacy.

On both ends of the commonly-perceived political spectrum of left-wing and right-wing, the I.R.S. has routinely used its usurped authority to spy on organizations which are believed, or which the I.R.S. has been told to believe, are potentially dangerous. In the early 1970's, the assignment of a special unit within the I.R.S., called the Special Service Staff (SSS), was surveillance of such groups. Among some of the stated goals of this S.S. within the I.R.S. were the neutralization of insidious threats to the internal security of this country, to "coordinate activities in all Compliance Divisions involving ideological, militant, subversive, radical, and similar type organizations; to collect basic intelligence data; and to ensure that the requirements of the Internal Revenue Code concerning such organizations had been complied with." The most ambitious of the mandates for the S.S.S. was an arrogant call to "coordinate this country." The agents in the S.S.S. were told to be especially mindful of "the notoriety of the individual or organization and the probability of publicity that might result from their activities and the likelihood that this notoriety would lead to inquiries regarding their tax status"; see Frank J. Donner, *The Age of Surveillance* (Vintage Books, New York, 1981) at 333.

Despite their fanciful and euphemistic pronouncements of purpose and intent, the S.S.S. was nothing more than a "hit squad," arbitrarily targeting political organizations and their officers, supporters, and members, as well as individual activists for I.R.S. harassment. Because of the fundamentally immoral basis for its existence, the S.S.S. operated furtively, skulking about, foraging for tax dirt; *ibid.*

In a report published for the Senate Committee on the Judiciary and the Senate Committee on Foreign Relations in 1974 entitled *Warrantless Wiretapping and Electronic Surveillance*, 93rd Congress, 2nd Session, Senator Lowell P. Weicker, Jr.'s testimony shows clearly that Congress has been fully aware of the evidence linking various I.R.S. operatives to illegal surveillance activities.

According to Weicker, "on July 1st, 1969, the White House requested that the Compliance Divisions of the IRS set up procedures for monitoring the operations of 'ideological organizations'"; see *Warrantless*, at 90. Of course, every identifiable group has

Senator Weicker then made the rather uncertain statement that, "The Internal Revenue Service is there to collect taxes, as I understand it, and not to perform some other law enforcement function." At which point, Senator Sam J. Ervin, Jr., commented that it was his understanding as well. Furthermore, Senator Ervin said "without any authority of law, that some officials in the Internal Revenue Service undertook to collect from the heads of American taxpayers ideas which these officials thought might be inimical with IRS idea of what people should think."

Senator Weicker then said that the agents involved "were not too proud of their own activity when they said they do not want to have it known, and the press should not be told what is going on. When that situation exists in the country then obviously something smells." Senator Ervin reminded everyone that "the Scriptures warrant for that. The Scriptures say that men love darkness rather than light because their deeds are evil"; see *Warrantless*, at 91.

Senator Weicker continued his testimony by saying that on January 26th, 1970, the I.R.S. asked for and got the release of confidential documents and information from Secret Service Director James Rowley who was the Chief of Secret Service at the White House during the Kennedy administration; see *Warrantless*, at 92. The Secret Service is a part of the Treasury Department as is the I.R.S. In fact, concerning these sensitive papers, the I.R.S. behaved "like a public lending library"; see *Warrantless*, at 97.

In 1971, when Newsday magazine published a series of embarrassing articles about Charles G. "Bebe" Rebozo, one of President Nixon's advisors and financial supporters, John Dean, one of the Watergate "plumbers," asked for and got the I.R.S. to do an audit of the leader of the Newsday investigative team.

Weicker revealed that the I.R.S. also used "the anonymous letter, the anonymous tip method" of initiating other investigations of targeted victims. This method is used to bring about investigations and audits at the State level; *ibid.*

A direct ancestor of the S.S.S. was the Intelligence Gathering and Retrieval Service (IGRS). The I.R.S. Intelligence Division started the 1930's bolstered by its reputed successes in bringing down Mafia kingpins, like Al Capone. But, ever subject to perversions and abuses of legitimate ends, the means which the I.R.S. used to gather information led to the emergence of "an institutionalized fishing expedition, a system for collecting and filing data about a huge range of targets"; see Donner, at 339. The ghost of Lafayette Baker haunts us yet and the prophetic warning of L. E. Chittenden is fulfilled again and again. The devious devices of the N.D.P., deception and falsehood, received official sanction in the I.G.R.S. and have now been immortalized in I.R.S. Intelligence Division spy schools. These schools teach agents how to maintain their cover, techniques of infiltration, and how to operate all manner of secret surveillance and recording devices. When these undercover agents go out in the field (meaning your backyard, your office, your home, your meeting places and your church), they do so with the Investigative Imprest Fund to financially back up their efforts. This fund is used to provide secret payments for informers, cover arrangements, witness protection, and the outfitting of undercover vehicles; see Donner, at 341. The same old charges of illegal abuses and corruption continue to follow these official I.R.S. programs. Only fools would expect a different result. According to Donner, at 345, "[C]orruption is an occupational disease of informer operations, breeding

tion effectively serve to prevent its exposure."

Just as Col. Lafayette C. Baker and his revenue officers were useful in obfuscating the assassination of President Lincoln, so the modern day edition of the I.R.S. was used in attempting to bring down New Orleans District Attorney Jim Garrison in 1972 following his crusade to bring President Kennedy's conspiratorial assassins to justice; see Donner, at 342.

Even for those purposes in which the I.R.S. Intelligence Division might have a legitimate reason to gather information, e.g., as a "focal point for information about organizations and individuals involved in tax strike, tax resister, tax protester activities," violations of privacy and of ordinary First Amendment rights of free speech and association become standard operating procedure. The infiltration of so-called tax protest groups by the I.R.S. is common and well known even among the real members of such groups. They are generally aware of the probability that I.R.S. spies are in their midst; they just don't know who. The prize coveted by these I.R.S. spies is, of course, the membership list. In one case discovered by a Senate committee chaired by Sen. Frank Church, the I.R.S. infiltrator not only obtained the legal defense plans of a member of the group charged in a federal court, but he also turned those plans over to the federal prosecutor handling the case in criminal violation of that defendant's rights; see Donner, at 344. Furthermore, the I.R.S. has admitted that administrative procedures are commonly used to circumvent the strictures of judicial procedure in criminal prosecutions; Donner, at 348.

Before becoming the Special Services Staff, this group was called the Activist Organizations Group and then the Special Service Group. After being exposed to a little light of day in the press on August 7, 1973, because of the revelations of an ex-F.B.I. agent, then-Commissioner Donald C. Alexander ordered its dissolution admitting its illegal nature; see Donner, at 335. Though the S.S.S. was supposedly disbanded, common sense and reality says that its name was changed again to protect the guilty. After all, you don't just toss out a 110-year history of doing things a particular way.

It may be that some of the more well publicized and investigated incidents of I.R.S. spying have been against unpopular political groups, but, obviously, those sorts of targets are used in order to invade the privacy rights of each and every one of us.

Privacy has been placed by the courts on the pedestal of Constitutional rights. The court in *Warden v. Hayden*, 387 U.S. 294, 304 (1967), stated:

> We have recognized that the principal object of the Fourth Amendment is the **protection of privacy** rather than property, and have increasingly discarded fictional and procedural barriers rested upon property concepts." (emphasis added)

But, once again, the I.R.S. is the continuing exception, because of its own abuse of power and also judicial complicity. The cavalier treatment of the privacy of American citizens has become disgracefully common. Arthur Miller, *The Assault on Privacy* (University of Michigan Press, Ann Arbor, 1971), at 40, states:

> [T]he basic attribute of an effective right of privacy is the individual's ability to control the circulation of information relating to him—a power that often is essential to maintaining social relationships and personal freedom.

dom. However, no matter who invades your privacy, the damage done is irreversible and irreparable; see Miller, at 208:

> [I]t is sometimes stated that the best corrective for the injuries caused by a defamation is more rather than less speech, on the theory that the truth eventually will win out if open debate is encouraged. This point has no validity in the privacy context, however, because further discussion of the sensitive information will only increase the injury to the individual's privacy. (emphasis added)

The Privacy Act Notice included with I.R.S. forms is actually a warning to the recipient that the Privacy Act means nothing to the I.R.S. and that virtually any old body with State or federal I.D. will be able to gain access to his or her records. The I.R.S. eagerly gives up taxpayer records for criminal investigative purposes. Practically speaking, the 1040 form has been exempted from Fourth and Fifth Amendment considerations by a cooperative federal judiciary. The I.R.S., in its Privacy Act Notice, admits that:

> We may give the [tax records] information to the Department of Justice and to other Federal agencies, as provided by law. We may also give it to States, the District of Columbia, and U.S. commonwealths or possessions to carry out their tax laws. And we may give it to foreign governments because of tax treaties they have with the United States.

In a Supreme Court decision to permit the I.R.S., via a so-called 3rd-party summons, to skirt the traditional confidentiality enjoyed between an accountant and the client in order to pry tax records loose, Justice Douglas dissented, warning against such despotic practices, *Couch v. United States*, 409 U.S. 322, 338 (1972):

> The decision today sanctions yet another tool of the ever-widening governmental invasion and oversight of our private lives . . . without the right of privacy "the Fourth Amendment and the Fifth are ready instruments for the police state that the Framers sought to avoid."

I.R.S. despotism which has become normal and acceptable, even to the United States Supreme Court, was born in a wartime atmosphere. It was condoned by high federal officials then, and it is now thoroughly ingrained in all tax collection agencies. The 3rd-party summons is the sanitized descendant of Colonel Baker's outrageous, uninhibited violations of private papers. It was just these sorts of abuses that were the last straw for the angry American colonists. The general warrant and the writ of assistance, used in aid of the collection of King George's oppressive taxes, were abhorred by the colonists because they were used to destroy their privacy.

The leading English case brought upon this process of the king was *Entick v. Carrington*, 19 Howell's State Trials 1029, 95 Eng. 807 (1765). John Wilkes had published several pamphlets critical of the king and Entick was an associate of Wilkes'. Wilkes was targeted for prosecution by the king and general warrants were then issued and used by officers of the Crown to raid, not only Wilkes' house and office, in order to find incriminating evidence against Wilkes, but "many homes and other places in search of materials connected with" Wilkes, including Entick's residence and place of business. The opinion rendered in this case by Lord Camden, the Chief Justice of the

(New York:1968), 391, 392).

In America, writs of assistance, which were used in enforcing the revenue laws, authorized the bearer to enter any house or other place to search for and seize "prohibited and uncustomed" goods and commanded all subjects to assist the customs agents in this collection effort. James Otis fought long and hard against this tyrannical form of process and eventually his argument in "Against Writs of Assistance" became a rallying point for the Colonists against the Crown; see Dickerson, "Writs of Assistance as a Cause of the American Revolution," in R. Morris (ed.), *The Era of the American Revolution: Studies Inscribed to Evarts Boutell Greene* (New York, 1939), at 40. The Fourth Amendment grew directly out these experiences of the Colonists; see *Chimel v. California*, 395 U.S. 752, 761 (1969):

> The [Fourth] Amendment was in large part a reaction to the general warrants and warrantless searches that had so alienated the colonists and had helped speed the movement for independence.

The 3rd-Party Summons possesses the most abhorrent feature of this historically outlawed and vilified process—they allow searches and seizures, under the color of law, of virtually anything and in any place, commanding any other citizen to aid in the search and seizure. However, process which is so universal had previously been forbidden; see *Hale v. Henkel*, 201 U.S. 43, 77, *United States v. Mills*, 185 F. 318, 319.

The just revulsion which the colonists had for these royal tax record summonses was incorporated into the U.S. Constitution. The Fourth and Fifth Amendments were included as protections against the attacks upon privacy by taxing authorities. In *Byars v. United States*, 273 U.S. 28, 33-34 (1927), the Court stated:

> The Fourth Amendment was adopted in view of long misuse of power in the matter of searches and seizures both in England and the colonies; and the assurance against any revival of it, so carefully embodied in the fundamental law, is not to be impaired by judicial sanction of equivocal methods, which, regarded superficially may seem to escape the challenge of illegality but which, in reality, strike at the substance of the constitutional right.

The colonists were obviously familiar with what freedom and liberty were about. Justice Harlan, in *Twining v. New Jersey*, 211 U.S. 78, 121 (1908), stated:

> It is to be observed that the Amendments introduced no principle not already familiar to liberty-loving people. They only put in the form of constitutional sanction, as barriers against oppression, the principles which the people of the colonies, with entire unanimity, deemed vital to their safety and freedom.

And the colonists sacrificed much to retain those freedoms. Chief Justice White, in *Bram v. United States*, 168 U.S. 532, 544 (1896), commented:

> [I]t was in that case [Boyd] demonstrated that both of these Amendments contemplated perpetuating, in their full efficacy, by means of a constitutional provision, principles of humanity and civil liberty, which had been secured in the mother country only after years of struggle, so as to implant them in our institutions in the fullness of their integrity, **free from the possibilities of future legislative change.** (emphasis added)

[In] the case of *Entick v. Carrington and Three Other King's Messengers* . . . Lord Camden pronounced the judgment of the court in Michaelmas Term, 1765, and the law as expounded by him has been regarded as settled from that time to this, and his great judgment on that occasion is considered as one of the landmarks of English liberty. It was welcomed and applauded by the lovers of liberty in the colonies as well as in the mother country. It is regarded as one of the permanent monuments of the British Constitution, and is quoted as such by the English authorities on that subject down to the present time.

As every American statesmen, during our revolutionary and formative period as a nation, was undoubtedly familiar with this monument of English freedom, and considered it as the true and ultimate expression of constitutional law, it may be confidently asserted that its propositions were in the minds of those who framed the Fourth Amendment to the Constitution, and were considered as sufficiently explanatory of what was meant by unreasonable searches and seizures . . .

* * *

[E]very invasion of private property, be it ever so minute, is a trespass. No man can set his foot upon my ground without my license, but he is liable to an action though the damage be nothing; which is proved by every declaration in trespass where the defendant is called upon to answer for bruising the grass and even treading upon the soil . . .

Papers are the owner's goods and chattels; they are his **dearest** property; and are so far from enduring a seizure, that **they will hardly bear an inspection** . . . where private papers are removed and carried away the **secret** nature of those goods will be an aggravation of the trespass, and demand more considerable damages in that respect . . .

* * *

Then, after showing that these general warrants for search and seizure of papers originated with the Star Chamber . . . Lord Camden proceeds to add:

> Lastly, it is urged as an argument of utility, that such a search is a means of detecting offenders by discovering evidence . . . **There is no process against papers in civil causes.** It is often tried, but never prevailed . . . It is very certain that the law obligeth no man to accuse himself; because the necessary means of compelling self-accusation, falling upon the innocent as well as the guilty, would be both cruel and unjust; and it would seem, that search for evidence is disallowed upon the same principle. (emphasis added)

But, as nobly as Lord Camden may have stated the cause, the *Boyd* Court, in ruling upon a tax issue, went even further; *Boyd*, at 630:

> The principles laid down in this opinion affect the very essence of constitutional liberty and security. They reach farther than the concrete form of the case then before the court . . . they apply to **all invasions** on the part of the government and its employes of the sanctity of a man's home and **the privacies of life.** It is not the breaking of his doors, and the rummaging of his drawers, that constitutes the essence of the offence; but it is the invasion of his **indefeasible right of personal security, personal liberty and private property**, where that right **has never been forfeited by his conviction of some public offence,**—it is the invasion of this sacred right which underlies

> be used as evidence . . . to **forfeit his goods**, is within the condemnation of that judgment. In this regard the Fourth and Fifth Amendments run almost into each other . . . And any compulsory discovery by extorting the party's oath, or **compelling the production of his private books and papers** . . . to **forfeit his property**, is contrary to the principles of a free government . . . It is abhorrent . . . It may suit the purposes of despotic power, but it cannot abide the pure atmosphere of political liberty and personal freedom. (emphasis added)

With Lafayette Baker, most confessions were tortured out of his victims, or were completely fabricated. But *Boyd* proscribed the subtle and subversive attempts to destroy a citizen's right to privacy and commanded the courts to be the guardians against these quiet, less obvious tyrannies; *Boyd*, at 635:

> Illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than substance. It is the **duty of the courts** to be watchful for the constitutional rights of the citizens and against **any** stealthy encroachments thereon. Their motto should be *obsta principiis* [resist the first encroachments]. (emphasis added)

The federal judiciary has, however, hardly resisted the I.R.S. at all, whether against its stealthy encroachments or against its rowdy assaults. Under the persistent attack of the I.R.S., the Fourth and Fifth Amendment rights so revered in *Boyd* have been subjected to a "shrinking process"; see *California v. Byers*, 402 US 424, 459 (1970) (Black, J., dissenting). Justice Black went on to say that these Constitutional guarantees have been diluted and watered down by the courts; see *Byers*, at 463. The general lack of resistance to Baker's methods in Lincoln's administration is attributable to (though not excusable thereby) the perceived danger of the ongoing war. But the greater danger of acquiescence in this unconstitutional atrocity was well stated by Justice Brennan, dissenting in *California v. Byers*, 402 U.S. 424, 474 (1970):

> Our society is not endangered by the Fifth Amendment. "The dangers of which we must really beware are . . . that we shall fall prey to the idea that in order to preserve our free society some of the liberties of the individual must be curtailed, at least temporarily. How wrong that kind of program would be is surely evident from the mere statement of the proposition." J. Harlan, Live and Let Live, in *The Evolution of a Judicial Philosophy* 285, 288 (D. Shapiro ed. 1969).

Justice Black, *ibid*, at 463:

> I can never agree that we should depart in the **slightest** way from the Bill of Rights' guarantees that give this country its high place among the free nations of the world. (emphasis added)

Unfortunately, the departure of the federal judiciary from the Bill of Rights relative to taxation has been reminiscent of Dunkirk.

In frequent demonstrations of "what's mine is yours," the I.R.S. has handed over

revealed that the I.R.S. hasn't lost its touch after over a hundred years of criminal behavior:

> I regard what I have recited above as a scandal of the first magnitude in the administration of the tax laws of the United States. It discloses nothing less than a witch-hunt, a crusade by the key agent of the United States in this prosecution to rid our society of unorthodox thinkers and actors by using federal income tax laws and federal courts to put them in the penitentiary.

Donner, at 326. Justice Douglas put his wise perspective on the problem in *Couch*, at 339:

> [T]he Fourth and Fifth Amendments delineate a "sphere of privacy" which must be protected against governmental intrusion . . .
>
> I defined what I believe to be the boundaries of this right to privacy in *Warden v. Hayden*, 387 U.S., at 323:
>
> > "The constitutional philosophy is, I think, clear. The personal effects and possessions of the individual ... are sacrosanct from prying eyes, from the long arm of the law, from any rummaging by police. Privacy involves the choice of the individual to disclose or to reveal what he believes, what he thinks, what he possesses . . . Those who wrote the Bill of Rights believed that every individual needs both to communicate with others and to keep his affairs to himself. That dual aspect of privacy means that the individual should have the freedom to select for himself the time and the circumstances when he will share his secrets with others and decide the extent of that sharing." (emphasis added)

In an unconscious acknowledgment of the long-forgotten prophetic fears of L. E. Chittenden of the effect of treating citizens like the "natural enemies of the government," Justice Douglas goes on to ask in *Couch*, at 341:

> Are we now to encourage meddling by the Government and ever more ingenious methods of obtaining access to sought-after materials? The premium now will be on subterfuge, on bypassing the master of the domain by spiriting the materials away or compelling disclosure by a trusted employee or confidant. Inevitably, this will lead those of us who cherish our privacy to refrain from recording our thoughts or trusting anyone with even temporary custody of documents we want to protect from public disclosure. In short, it will stultify the exchange of ideas that we have considered crucial to our democracy.

As Paul DesFosses has remarked, the I.R.S. fully intends to intrude upon every facet of all of our lives, in an Orwellian fulfillment of the desire of Colonel Lafayette C. Baker to be able to incriminate anyone and everyone in the nation and to bring anyone and everyone in the nation under the heel of the I.R.S. Arthur Miller's prophetic warning is slowly but surely being fulfilled. Miller, at 220, stated:

Unless we maintain our vigilance against today's pressures, we may find ourselves confronted by something akin to the Chinese Communist Party's program to register and monitor every household in China.

pare the I.R.S. to the Gestapo. The I.R.S., after all, was doing it long before Hitler stoked his first oven. Current oppressive I.R.S. behavior is nothing more than a progression from the seminal work of Colonel Lafayette Baker. Certainly the methods used now are more technologically sophisticated, but are no less brutal in their effect. Justice Brandeis, in his dissent in *Olmstead v. United States*, 277 U.S. 438, 473 (1928), commented on this situation:

> But "time works changes, brings into existence new conditions and purposes." Subtler and more far-reaching means of invading privacy have become available to the Government. Discovery and invention have made it possible for the Government, by means far more effective than stretching upon the rack, to obtain disclosure in court of what is whispered in the closet.

Similarly, the Sixteenth Amendment fraud draws from the sordid history of the Fourteenth and Fifteenth Amendments. We have previously discussed the connection made between these three amendments by Knox's Solicitor, Reuben Clark, and by the Congressional Research Service report, No. 80-89, which discredits Clark's claims regarding the processes undertaken in the Fourteenth and Fifteenth Amendments. It is, again, useful to study the history of those two amendments, the purported ratification of each, which were indeed dark days in our legal history. It is in the shameful Supreme Court see-no-evil attitude about these two amendments that the political question doctrine was perverted into a judicial excuse to dodge judicial responsibilities.

There are no winners in wars, only victors. This is especially true in civil wars, wars fought between brothers, relatives and neighbors. The costliest war ever fought by the United States was the Civil War. 360,000 Americans lost their lives in the Civil War. Although 385,000 lost their lives during World War II, the percentage of the number killed to the size of the armed forces was far less during World War II—.28% to 1.8%; see Eric L. McKitrick, *Andrew Johnson and Reconstruction* (The University of Chicago Press, Chicago, 1960), at 27. The biggest casualty of all was the United States Constitution. A small group of men, more than all the rest of the American citizens, were so determined to strike a blow at this country's fundamental law that they were willing to send 360,000 men to a slaughter, assassinate a President and impeach his successor.

On January 26, 1970, *U.S. News & World Report* ran an editorial by David Lawrence, the owner and publisher, entitled "The Worst Scandal In Our History"; see *U.S. News & World Report*, January 26, 1970, at 95-96. What was "The Worst Scandal In Our History," according to Mr. Lawrence? The supposed ratification of the Fourteenth and Fifteenth Amendments.

The text of the Fourteenth Amendment reads as follows:

> Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

sons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

The text of the Fifteenth Amendment reads as follows:

Section 1. The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

Both amendments sound noble. Following after the ratification of the Thirteenth Amendment, which accomplished the abolitionist goal in constitutionally prohibiting slavery, or "involuntary servitude," the Fourteenth and Fifteenth Amendments seemed to extend the road of opportunity for the freed slaves. The permanent prohibition of slavery was, indeed, a noble goal, and the assurance of the rights guaranteed to white Americans by the Constitution to the freed slaves was a noble goal. But these noble goals have not been accomplished without havoc being wreaked upon the Constitution, and, it is extremely doubtful whether the noble goals themselves have actually been accomplished.

The black population in this country exists in a more divided situation than any other ethnic group. While some have managed to escape the social dungeons called ghettoes, far greater numbers still subsist in a virtual slave state, seduced and chained to one of the legacies of the Fourteenth and Fifteenth Amendments—welfare. Many blacks are caught in a vicious welfare cycle which keeps them perpetually dependent

now in total disrepute. Slavery has not disappeared; it has been re-institutionalized in Washington, D.C.

Although blacks are not truly different statistically as is commonly claimed by the media, they were made the special targets of social legislation following the Civil War; see Thomas Sowell, *Civil Rights: Rhetoric or Reality?* (Wm. Morrow & Co., New York, 1984). That legislation has helped to perpetuate the problems that blacks still have.

Many politicians, both white and black, depend upon this captive voting bloc to put them in office. Such people apparently have no qualms about buying ghetto votes for $5,000 apiece in welfare checks. Of course, these politicians don't have to foot the bill for such bribes. The taxpayers do.

In *Dyett v. Turner*, 20 Utah 2d 403, 439 P.2d 266 (1968), the Utah Supreme Court made a plaintive statement of their displeasure at laboring under the curse of the Fourteenth Amendment, at 268-69:

> We feel like galley slaves chained to our oars by a power from which we cannot free ourselves, but like slaves of old we think we must cry out when we can see the boat heading into the maelstrom directly ahead of us; and by doing so, we hope the master of the craft will heed the call and avert the dangers which confront us all. But by raising our voices in protest we, like the galley slaves of old, expect to be lashed for doing so. We are confident that we will not be struck by 90 per cent of the people of this Nation who long for the return to the days when the Constitution was a document plain enough to be understood by all who read it, the meaning of which was set firmly like a jewel in the matrix of common sense and wise judicial decisions. We shall not complain if those who berate us belong to that small group who refuse to take an oath that they will not overthrow this government by force. When we bare our legal backs to receive the verbal lashes, we will try to be brave; and should the great court of these United States decide that in our thinking we have committed error, then we shall indeed feel honored, for we will then be placed on an equal footing with all those great justices who at this late date are also said to have been in error for so many years.
>
> * * *
>
> In regard to the Fourteenth Amendment, which the present Supreme Court of the United States has by decision chosen as the basis for invading the rights and prerogatives of the sovereign states, it is appropriate to look at the means and methods by which that amendment was foisted upon the Nation in times of emotional stress.

The Court then went on to describe some of the preposterous and unlawful swindles and coercions perpetrated under the direction of a small group of politicians in Congress, at 271-73:

> When the 39th Congress assembled on December 5, 1865, the senators and representatives from the 25 northern states voted to deny seats in both houses of Congress to anyone elected from the 11 southern states. The full complement of senators from the 36 states of the Union was 72, and the full membership in the House was 240. Since it requires only a majority vote (Article I, Section 5, Constitution of the United States) to refuse a seat in Congress, only the 50 senators and 182 congressmen from the North were

Joint Resolution No. 48 proposing the Fourteenth Amendment was a matter of great concern to the Congress and to the people of the Nation. In order to have this proposed amendment submitted to the 36 states for ratification, it was necessary that two thirds of each house concur. A count of noses showed that only 33 senators were favorable to the measure, and 33 was a far cry from two thirds of 72 [the full Senate] and lacked one of being two thirds of the 50 seated senators [from the North].

While it requires only a majority of votes to refuse a seat to a senator, it requires a two thirds majority to unseat a member once he is seated. (Article I, Section 5, Constitution of the United States) One John P. Stockton was seated on December 5, 1865, as one of the senators from New Jersey. He was outspoken in his opposition to Joint Resolution No. 48 proposing the Fourteenth Amendment. The leadership in the Senate not having control of two thirds of the seated senators voted to refuse to seat Mr. Stockton upon the ground that he had received only a plurality and not a majority of the votes of the New Jersey legislature. **It was the law of New Jersey and several other states that a plurality vote was sufficient for election. Besides, the Senator had already been seated. Nevertheless, his seat was *refused*,** and the 33 favorable votes thus became the required two thirds of the 49 members of the Senate.

In the House of Representatives it would require 122 votes to be two thirds of the 182 members seated. Only 120 voted for the proposed amendment, but because there were 30 abstentions it was declared to have been passed by a two thirds vote of the House.

* * *

Nebraska had been admitted to the Union, so the Secretary of State in transmitting the proposed amendment announced that ratification by 28 states would be needed before the amendment would become part of the Constitution, since there were at the time 37 states in the Union. **A rejection by 10 states would thus defeat the proposal.**

By March 17, 1867, the proposed amendment had been ratified by 17 states and **rejected by 10,** with California voting to take no action thereon, which was equivalent to rejection. Thus the proposal was defeated.

One of the ratifying states, Oregon, had ratified by a membership wherein two legislators were subsequently held not to be duly elected, and after the contest the duly elected members of the legislature of Oregon rejected the proposed amendment. However, this rejection came after the amendment was declared passed.

* * *

Despite the fact that the southern states had been functioning peacefully for two years and had been counted to secure ratification of the Thirteenth Amendment, Congress passed the Reconstruction Act, which provided for the **military occupation** of 10 of the 11 southern states. It excluded Tennessee from military occupation, and one must suspect it was because Tennessee had ratified the Fourteenth Amendment on July 7, 1866. **The Act further disenfranchised practically all white voters and provided that no senator or congressman from the occupied states could be seated in Congress *until a new constitution was adopted by each state which would be approved by Congress*, and further provided that each of the 10 states must ratify the proposed Fourteenth Amendment, and the Fourteenth Amendment must become a part of the Constitution of the United States before the military occupancy**

more states had ratified the proposed Fourteenth Amendment, and two—Louisiana and Delaware—had rejected it. Then Maryland withdrew its prior ratification and rejected the proposed Fourteenth Amendment. Ohio followed suit and withdrew its prior ratification, as also did New Jersey. California, which earlier had voted not to pass upon the proposal, now voted to reject the amendment. Thus 16 of the 37 states had rejected the proposed amendment.

By spurious, nonrepresentative governments seven of the southern states which had theretofore rejected the proposed amendment under the duress of military occupation and of being denied representation in Congress did attempt to ratify the proposed Fourteenth Amendment. The Secretary of State [William H. Seward] on July 20, 1868, issued his proclamation wherein he states that it was his duty under the law to cause amendments to be published and certified as a part of the Constitution when he received official notice that they had been adopted pursuant to the Constitution.

* * *

The Constitution of the United States is silent as to who should decide whether a proposed amendment has or has not been passed according to formal provisions of Article V of the Constitution. The Supreme Court of the United States is the ultimate authority on the meaning of the Constitution and has never hesitated in a proper case to declare an act of Congress unconstitutional—except when the act purported to amend the Constitution. The duty of the Secretary of State was ministerial, to wit, to count and determine when three fourths of the states had ratified the proposed amendment. He could not determine that a state once having rejected a proposed amendment could thereafter approve it, nor could he determine that a state once having ratified that proposal could thereafter reject it. The court and not Congress should determine such matters. Consistency would seem to require that a vote once cast would be final or would not be final, whether the first vote was for ratification or rejection.

In order to have 27 states ratify the Fourteenth Amendment, it was necessary to count those states which had first rejected and then under the duress of military occupation had ratified, and then also to count those states which initially ratified but subsequently rejected the proposal.

To leave such dishonest counting to a fractional part of Congress is dangerous in the extreme. What is to prevent any political party having control of both houses of Congress from refusing to seat the opposition and then without more passing a joint resolution to the effect that the Constitution is amended and that it is the duty of the Administrator of the General Services Administration to proclaim the adoption? Would the Supreme Court of the United States still say the problem was political and refuse to determine whether constitutional standards had been met?

How can it be conceived in the minds of anyone that a combination of powerful states can by force of arms deny another state a right to have representation in Congress until it has ratified an amendment which its people oppose? The Fourteenth Amendment was adopted by means almost as bad as that suggested above.

We have spoken in the hope that the Supreme Court of the United States may retreat from some of its recent decisions affecting the rights of a sovereign state to determine for itself what is proper procedure in its own courts as it affects its own citizens. However, we realize that because of that Court's

In *Dyett*, the Utah Supreme Court said that they had "no desire at this time to have the Fourteenth Amendment declared unconstitutional" and that "because of [the United States Supreme] Court's superior power, [they had to] pay homage to it even though we disagree with it . . . "; see *Dyett*, at 269 & 273. The reason why State courts must now "pay homage" to the United States Supreme Court is precisely because of cowardly acquiescence in the Fourteenth Amendment. As will be discussed in next section, one of the intended purposes of the Fourteenth Amendment was to allow the federal judiciary to "speedily invade" State courts which would refuse to acknowledge that the Bill of Rights applied to all citizens of the United States. The intention of the founding fathers on this issue is clearly set forth in Article III, Section 2, of the United States Constitution, which states:

> The judicial power shall extend to all Cases, in Law and Equity, arising under this Constitution . . .

Obviously, even before the Fourteenth Amendment, the United States Supreme Court had the authority to hear cases which involved any issue of the violation of rights guaranteed by the federal Constitution. The Fourteenth Amendment, therefore, is redundant in this regard. By allowing it to invade the State judiciaries, a completely new and dangerous power was given to the federal government—the capability to break down the constitutional barriers between federal and State authority.

The problem with this intention to invade State authority was that it violated the Tenth Amendment to the United States Constitution, a part of the Bill of Rights. The Tenth Amendment reads as follows:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Obviously, no power to destroy State judiciaries, or any other part of State governments, was ever delegated to the United States, nor could it ever be. If it were constitutionally permissible to do such a thing, then a majority of the States could pass virtually any statute they wished in Congress in order to strip the minority of the States of their State governments.

In addition, the effect of Section 4 of the Fourteenth Amendment was to abrogate the right of the people to protest the public debt of the federal government in any way, an incredibly arrogant violation of the First Amendment. This section has cleared the way for the monstrous, fiscal irresponsibility which has become standard operating procedure in Congress. Though no federal statute directly prohibits protesting the federal deficit, the courts have frequently held that they will not countenance such protests.

The abolitionists were those people who expressed a determination to abolish slavery. This antislavery movement was international in scope and drew its strength from two main sources. The Quakers, both in Great Britain and America, started the criticism in the late 17th century and other religious groups followed suit, forming the major source of abolitionist support. The other source of support came from the

early part of the 19th century, the chief success of the abolitionists was the official abolition of the slave trade. Unofficially, of course, slavery continued practically without abatement. Emancipation, therefore, emerged as the new and more militant tactic of the abolitionists in 1830. The militancy of the emancipation phase of the abolition movement offended many people. The belief that what the abolitionists were advocating was basically unconstitutional, however, was widespread, even in the North. Though willing to prevent new States from entering the Union without State constitutional clauses prohibiting slavery, Northerners, other than abolitionists, generally were not agreeable to abolishing slavery in the South. The philosophical standoff reached a less than philosophical early climax in John Brown's raid to free some slaves, at Harper's Ferry, Virginia, in 1859. That incident was a symptom of the deep feelings waiting to tear the country apart. What those feelings lacked was greater political direction. Into the leadership vacuum stepped the Radical Republicans.

Article 4, Section 3 of the United States Constitution prohibits the formation of a new State within the boundaries of another State, unless, of course, the latter State should so agree. One of early consequences of the Civil War was the slaughter of this provision of the Constitution.

At the outbreak of the Civil War, Harper's Ferry was located where it always had been—in Virginia. John Brown made this small town famous by his abolitionist raid there in 1859. This raid and the subsequent hanging of John Brown was undoubtedly a factor in heightening abolitionist sentiments in Virginia. The people in the western regions of Virginia, by most accounts, were against slavery and considered federal intervention a necessity, while most of the people in the rest of Virginia favored handling the question under the broader constitutional doctrine of States' rights.

In 1860 and 1861, certain Southern States, asserting the doctrine of States' rights, left the Union and formed the Confederacy with its capital in Montgomery, Alabama. Virginia was not as ready as the others to leave the Union and wanted to resolve the sectional differences by peaceful agreement and without war. To determine this question regarding Secession, the people of Virginia voted on February 4, 1861, for delegates to the Secession Convention, which met from February 13, 1861, until late April, 1861. On April 12, 1861, military forces of the State of South Carolina pre-empted a more rational situation for the Convention by firing upon Fort Sumter, and five days later, on April 17, 1861, the Virginia Secession Convention voted in favor of Secession.

The Convention proposed that the resolution of April 17 be approved by the voters at a special election to be held on May 23, 1861. But, during the interim, the Convention prepared for war and joined the Confederacy on April 25, 1861. With Virginia's entry into the Civil War on the side of the Confederacy, the capital of the Confederate States was moved to Richmond, Virginia. Stonewall Jackson took possession of Harper's Ferry on April 29, 1861.

On May 13, 1861, a group of Unionists from the western region of Virginia met in Wheeling, Virginia, to discuss both a seperate State movement and the forthcoming vote on the Secession question of May 23. When Secession was approved on that date, another Convention of Unionists was called immediately. On June 11, 1861, the second Wheeling Convention met and formed the "Loyal" or "Restored" Government of Virginia, and it elected a Governor, two U.S. Senators and other governmental officials.

the vote being considered with a dismemberment ordinance. Between October, 1861, and February, 1862, a convention was held to draft a constitution for the brand, new unconstitutional State of West Virginia, which was hacked off the northwestern quarter of Virginia. The convention met again in February, 1863, to adopt the Thirteenth Amendment to the United States Constitution, which Congress had decided to legislatively compel any of the seceded States to ratify before such a State could be readmitted to the Union. Congress admitted West Virginia as a new State on June 20, 1863.

With General Robert E. Lee's surrender at the Appomattox Court House in Virginia, the Civil War was over, at least insofar as men in the battlefield were concerned. However, in late 1865, the Virginia Legislature met and repealed all legislation upon which statehood for West Virginia was based. To date, Virginia has never agreed to the formation of West Virginia from within its borders. Constitutionally speaking, West Virginia is not a State no matter what its former governor and present U.S. Senator, Jay Rockefeller, may contend. Furthermore, the courts have never decided the status of West Virginia.

The Radical Republicans were of the French school of abolition. In fact, they were alternatively called the Jacobins (pronounced zhak-o-bah), after the Jacobins clubs of revolutionary France. Those clubs were cells of the Illuminati of Adam Weishaupt which fomented the French Revolution under the slogan, *liberte, egalite, fraternite*; or liberty, equality, brotherhood. The primary interest of the Radical Republicans in promoting abolition was that which motivated the Jacobins efforts in the French Revolution—the seizing of power under the banner of an emotionally charged issue. The Jacobins of France were responsible for the infamous Reign of Terror, similar to the "Reign of Terror" instituted by Colonel Lafayette Baker, appointed to a dual post by Radical Republicans Salmon Chase and Edwin Stanton. He both collected the revenue and spied on everyone in the country. In fact, Baker was feared so greatly that even those who palpably outranked him were loathe to publicly accuse him; see Vaughan Shelton, *Mask of Treason* (Stockpole Books, Harrisburg, PA, 1965), at 289.

The politics of those times were caught in the swirling currents of power which were fed by raucous abolitionists, supported by the Radical Republicans and by the powerful economic interests of both North and South. The abolitionists were philanthropic zealots who had a just cause—the emancipation of the slaves. The Radical Republicans, or Jacobins, were determined to sound the abolitionist's call, but not to help the slaves. The charge which they directed was to be aimed at the walls separating the powers and built into the Constitution to prevent tyrannical concentrations of power. The Radical Republicans achieved a large measure of their goal.

On February 22, 1866, President Johnson expressed his disapproval of the Radical program as destructive of the Union; see *The New York Herald*, February 23, 1866:

> They struggled for the breaking up of the government, but before they are scarcely out of the battlefield, and before our brave men have scarcely returned to their houses to renew the ties of affection and love, we find ourselves almost in the midst of another rebellion.
>
> The war to suppress our rebellion was to prevent the separation of the states and thereby change the character of the government and weakening

> consolidation which is equally dangerous and objectionable with separation. We find that powers are assumed and attempted to be exercised of a most extraordinary character. What are they? We find that governments can be revolutionized, can be changed without going into the battlefield....

Specifically, the Radical Republicans succeeded in breaking down the balance of power between that power delegated to the federal government by the Constitution, the inherent power in the States (inherent in the Constitution because of the States existence prior to the founding of the nation), and the natural sovereign power of the people from which flows all power in either the federal or State governments. They also attempted to, and nearly succeeded in, breaking down the separation of powers in the three branches of the federal government.

The Fourteenth and Fifteenth Amendments were foisted upon the American people almost exclusively through the efforts of the Radicals. The military occupation of the Southern Legislatures, the removal of duly elected representatives in those Legislatures, the election of new representatives by only black or avowedly Unionist voters, the refusal to seat the duly elected Southern Congressional representatives, the fraudulent disenfranchising of the voters in New Jersey, the postwar financial and social battering of the South, the Civil Rights legislation, and the impeachment of President Andrew Johnson were all a part of the successful Radical campaign to seize power and cripple the Constitution which culminated in those amendments. This was the period aptly named the Reconstruction for it resulted in the reconstruction of the basic structure of government in the United States.

The dislocations which the Civil War Amendments caused were practically nonexistent in the North in the period following the Civil War. At that time, relatively few American blacks were not slaves and fewer still lived in the Northern States. The Radicals had absolutely no risk of sudden and dynamic shifts in their constituency due to any of the amendments to the Constitution which they had proposed. Only six of the Northern States which demanded Negro suffrage for the Southern States permitted Negro suffrage themselves. The other twenty-one were hypocritical on this issue; see McKitrick, at 58. For the time being, the risks were to belong solely to the Southern States. Based upon the intention of the Radicals to destroy the South for their own political advantage, the fiasco created by the amendments and their ratification process should have been expected. And many did foresee the problems. Their attempts to block the Radical program failed, however.

During the debate over the Fifteenth Amendment in Congress, the Democrats and conservative Republicans took the position that the Amendment would transcend the inherent limitations of the power to amend the Constitution; see Arthur W. Machen, Jr., *Is The Fifteenth Amendment Void?*, 23 Harvard Law Review 169 (1909). The contention was that while the Constitution could be amended, it could not have an addition made to it. The assertion was made that the Fifteenth Amendment compelled the States to alter their political institutions; see Machen, at 172.

The constitutional basis for this assertion was contained in Article V of the United States Constitution. Article V, which contains the provision for amending, also restricts the amending process to the extent that "no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner

restrictions on amending applied to the context of slavery were three:

1. That the abolition of slavery could not take place until after the year 1808; see *U.S. Constitution*, Article I, Section 9. As previously mentioned, it was shortly after 1808 that the slave trade was abolished, though the actual ownership of slaves continued.

2. That the apportionment clause could not be amended until after 1808.

3. That no State could be deprived of its basic right to have representation in the Senate, or "equal Suffrage", without its consent.

The concept of a State combines people, territory and government. As a dynamic force subject to migration, birth rates and death, the people change over time, but the territorial boundaries and the governmental boundaries are to be fixed by the State constitution. The boundary of power of federal power relative to the States was also to be fixed.

The States formed a Union, but the Constitution of the United States contemplated a balance of power between the federal and State governments and the people, although not necessarily an equal balance. The Tenth Amendment in the Bill of Rights clearly intended that any power not expressly granted to either the federal or State governments remained in the people, that is, such power was denied to any artificial governmental body. The restriction in Article V against deprivation of representation in the Senate was supposed to be an ironclad guarantee that no State could ever be completely stripped of its voice in Congress. The Tenth Amendment and Article V, thus, formed an impenetrable boundary of federal power. Congressional representation was structured differently, of course. The people rather than each State were not to be denied their equal suffrage in the House, but the linking of direct taxation and members of the House would allow the voters in a particular Congressional district to recall their Representative any time taxation became too oppressive, or for any other reason. The link of taxation and House representation is significant because all appropriation measures must start in the House; see *U.S. Constitution*, Article I, Section 7. Representatives thus were meant to be more vulnerable to the political process generally. Insofar as Senatorial representation was concerned, the States were to remain as independent, automonous powers within the framework of the Union; they could not be welded together with State boundaries obliterated.

So it is that several basic features of the American political process are factors in equal suffrage in the Senate. The most obvious is the requirement that each State be permitted to seat two Senators chosen by the Legislature of that State (prior to the purported ratification of the Seventeenth Amendment, Senators were elected by the Senate of the Legislature in each State). No amendment could ever be lawfully ratified which would diminish that requirement. It should go without saying that arbitary enforcement of Senate rules cannot effectuate the same result. A State might willingly give up its right to "equal Suffrage," unlikely as that would be, but it could not be forced to give it up. Any attempt on the part of the federal government, or of any combination of States, to unilaterally deny any State its equal suffrage in the Senate would be, thus, completely unconstitutional and, moreover, would seem to be completely unthinkable.

The Radical Republicans did think to do just that, however. That is exactly what happened in the case of Senator Stockton of New Jersey as well as the Senate contin-

States, who were allowed to enter their respective chambers from 1867 through 1870, had been elected by the bogus mandate of the First Reconstruction Act of 1867. That act read, in pertinent part:

> Whereas no legal State governments or adequate protection for life or property now exists in the rebel States of Virginia, North Carolina, South Carolina, Georgia, Mississippi, Alabama, Louisiana, Florida, Texas, and Arkansas; and whereas it is necessary that peace and good order should be enforced in said States until loyalty and republican State governments can be legally established: Therefore
>
> Be it enacted, .. That **said rebel States shall be divided into military districts and made subject to the military authority of the United States**, as hereinafter prescribed, and for that purpose Virginia shall constitute the first district; North Carolina and South Carolina the second district; Georgia, Alabama and Florida, the third district; Mississippi and Arkansas the fourth district; and Louisiana and Texas the fifth district.
>
> * * *
>
> It shall be the duty of the President to assign to the command of each of said districts an officer of the army, not below the rank of brigadier general, and to detail a sufficient military force to enable such officer to perform his duties and enforce his authority within the district to which he is assigned.
>
> . . . and when said State, by a vote of its legislature elected under said constitution, shall have adopted the amendment to the constitution of the United States, proposed by the thirty-ninth Congress, and known as article fourteen, and when said article shall have become a part of the Constitution of the United States, said State shall be **declared entitled to representation in Congress, and senators and representatives shall be admitted therefrom** on their taking oaths prescribed by law, and then and thereafter the preceding sections of this act shall be inoperative in said State: . . . (emphasis added)

Acts and Resolutions, 39 Cong., 2 Sess., p. 60. The First Reconstruction Act was vetoed by President Andrew Johnson, but passed over his veto the same day, March 2, 1867.

During the period immediately following the war, the Southern States had held regular elections of their governors, State Legislatures, and members of Congress. On May 29, 1865, President Johnson evidenced his intent to continue the conciliatory program of Reconstruction envisioned by Lincoln, to the displeasure of the Radicals. Johnson issued two proclamations. One set forth the terms whereby Southerners could obtain amnesty, a perfectly legitimate exercise of the President's pardoning power. The other, issued in his capacity as commander-in-chief, appointed a provisional governor for North Carolina and authorized him to establish a government there. Similar proclamations were issued shortly thereafter for six other states.

By late fall of 1865, the Southern State Legislatures were organized and in session. Upon the ratification of the Thirteenth Amendment by any of these States, the President would then retire that State's provisional governor, and the elected governor would take office. As far as President Johnson was concerned, those States had fully operational governments. By the end of 1865 only Texas had yet to be "reconstructed." The remainder were entitled to the full rights of representation in the Congress.

Thus, by the end of 1865, the duly elected governments of the Southern States had already received Presidential recognition. They had already participated in the ratifi-

Act was used as an unlawful excuse to unseat the Congressional Senators from the South and to disenfranchise those States relative to their right to send Senators of the free choice their respective Legislatures. Recognizing the grievous problems with the First Reconstruction Act, President Johnson vetoed it. He denounced the Radicals' move to militarily occupy the Southern States as "a bill of attainder against nine million people at once"; see Walter J. Suthon, Jr., *The Dubious Origin of the Fourteenth Amendment*, 28 Tulane L. R. 22 (1953). The Radical-controlled Congress passed the First Reconstruction Act over Johnson's veto.

The Radicals had proposed the Reconstruction Act in retaliation to the nearly unanimous response of the Southern States to the proposed Fourteenth Amendment —rejection. Among the Southern States, only Tennessee had ratified the amendment and had been permitted access to the Senate and House on July 24, 1866.

In a report to the Florida Legislature of 1866, the Fourteenth Amendment was rejected for the following reasons:

> As the representatives of the people of the State of Florida, we protest that we are willing to make any organic changes of a thoroughly general character, and which do not totally destroy the nature of the government. We are willing to do anything which a generous conqueror even should demand... On the other hand, we will bear any ill before we will pronounce our own dishonor. We will be taxed without representation; we will quietly endure the government of the bayonet; we will see and submit to the threatened fire and sword and destruction, but we will not bring, as a peace offering, the conclusive evidence of our own self-created degradation.

Fleming, at 236.

In a similar vein, the Arkansas Legislature rejected the Fourteenth Amendment on December 10, 1866:

> 1. It is not known, nor can it be, to the State of Arkansas, that the proposed amendment was ever acted upon by a Congress of such a character as is provided for by the constitution, inasmuch as nearly one-third of the States were refused representation in the Congress which acted upon this amendment.
>
> 2. This proposed amendment was never submitted to the President for his sanction, as it should have been, according to the very letter of that Constitution under which Congress exists . . .
>
> 3. The great and enormous power sought to be conferred on Congress by the amendment, by giving to that body authority to enforce by appropriate legislation the provisions of the first article of said amendment, would, in effect, take from the States all control over their local and domestic concerns, and virtually abolish the States.
>
> 4. The second section seems, to the committee, an effort to force negro suffrage upon the States; and whether intended or not, it leaves the power to bring this about, whether the States consent or not; and the committee are of the opinion that every State Legislature should shrink from ever permitting the possibility of such a calamity.
>
> 5. The third section, as an act of disfranchisement which would embrace many of our best and wisest citizens, must, of necessity, be rejected by the people of Arkansas.

which, after having rejected the Fourteenth Amendment, was reconsidering it. His telegram advised the Alabama Legislature of the following:

> What possible good can be obtained by reconsidering the constitutional amendment? I know of none in the present posture of affairs; and I do not believe the people of the whole country will sustain any set of individuals in attempts to change the whole character of our government by enabling acts or otherwise. I believe, on the contrary, that they will eventually uphold all who have patriotism and courage to stand by the Constitution, and who place their confidence in the people. There should be no faltering on the part of those who are honest in their determination to sustain the several coordinate departments of the government in accordance with its original design.

Fleming, at 237-38.

The Reconstruction Act's features which aided the coercion of the ratification of the Fourteenth Amendment over the resistance of the Southern States were described by Senator Doolittle of Wisconsin, a Northerner and a Conservative Republican, during the floor debate on the bill:

> [W]e will march upon [the Southern States] and force them to adopt it at the point of the bayonet, and establish military power over them until they do adopt it. Cong. Globe, 39th Cong., 2d Sess., Part 3, at 1644 (1867).

Fleming, at 32.

As a result of the enforcement of the First Reconstruction Act, puppet regimes under the control of the Radicals were installed in place of those which had been duly elected. These puppet regimes adopted new State constitutions and ratified the Fourteenth Amendment. In July, 1868, when seven of the Southern puppet regimes had ratified the Fourteenth Amendment, the fractional Congress passed a Joint Resolution in conjunction with the proclamation of Secretary of State Seward, declaring the ratification of the amendment. This was done despite the subsequent rejections and withdrawals of the States of Louisiana, Delaware, Maryland, Ohio, New Jersey and California; see Suthon, at 36 & *Dyett*, *supra*.

The incredible process, under the First Reconstruction Act, of military subjugation of the Southern States after the cessation of hostilities in order to force those States to elect State legislative representatives, who could only be elected by black or Unionist voters, to adopt new State constitutions and to ratify the Fourteenth Amendment was obviously contrary to the Supreme Court's decision in *Texas v. White*, 7 Wall. 700 (1866), which was quoted and commented on in *Dyett*, *supra*, which stated, at 269-70:

> In the case of State of Texas v. White, 7 Wall. 700, 19 L.Ed. 227, it was claimed that Texas having seceded from the Union and severed her relationship with a majority of the states of the Union, and having by her ordinance of secession attempted to throw off her allegiance to the Constitution of the United States, had thus disabled herself from prosecuting a suit in the federal courts. In speaking on this point the Court at page 726, 19 L.Ed. 227 held:
>
> > When, therefore, Texas became one of the United States, she entered into an indissoluble relation. All the obligations of perpet-

> her admission into the Union was something more than a compact; it was the incorporation of a new member into the political body. And it was final. The union between Texas and the other States was as complete, as perpetual, and as indissoluble as the union between the original States. There was no place for reconsideration, or revocation, except through revolution, or through consent of the States.
>
> * * *
>
> Our conclusion therefore is, that Texas continued to be a State, and a State of the Union, notwithstanding the transactions to which we have referred.

This was substantially the same position which President Johnson took; see McKitrick, at 109:

> The Constitution imperatively declares . . . that each State shall have at least one Representative, and fixes the rule for the number.... It also provides that the Senate of the United States shall be composed of two Senators from each State, and adds with peculiar force 'that no State, without its consent, shall be deprived of its equal suffrage in the Senate.'... At the time, however, of the consideration and the passing of this bill there was no Senator or Representative in Congress from the eleven States which are mainly to be affected by its provisions . . . As eleven States are not at this time represented in either branch of Congress, it would seem to be . . . [my] duty on all proper occasions to present their just claims to Congress.... It is hardly necessary for me to inform Congress that in my own judgment most of those States, so far, at least, as depends upon their own action, have already been fully restored, and are to be deemed as entitled to enjoy their constitutional rights as members of the Union.

Yet, starting with *Mississippi v. Johnson*, 4 Wall. 475 (1867), the Supreme Court, under the guidance of the Radical Chief Justice, Salmon Chase, chose to evade consideration of the constitutionality of the First Reconstruction Act. This case was the origin of the morally bankrupt and treasonous application of the political question theory to the amending process. The conspiracy which the Radicals executed against the sovereignty, not just of the people of the South, but of all Americans is all too clear.

In *The Federalist*, No. 43, Madison wrote:

> It may possibly be asked, what need there could be of such a precaution [to prohibit the denial of equal suffrage in the Senate], and whether it may not become a pretext for alterations in the State governments, without the concurrence of the States themselves.
>
> * * *
>
> [T]he authority extends no further than to a guaranty of a republican form of government, which supposes a pre-existing government of the form which is to be guaranteed. As long, therefore, as the existing republican forms are continued by the States, they are guaranteed by the federal Constitution. Whenever the States may choose to substitute other republican forms, they have a right to do so, and to claim the federal guaranty for the latter. The only restriction imposed on them is, that they shall not exchange republican for anti-republican Constitutions; a restriction which, it is presumed, will hardly be considered as a grievance.

chose to join their conspiracy in *Mississippi v. Johnson*.

The Fifteenth Amendment, granting suffrage to adult, black males, created a problem for the Southern States which was especially burdensome in the deep South because of the far greater number of freed slaves. This problem also involved a change in Senatorial suffrage.

The ratification of the Fifteenth Amendment acted like a magic wand which suddenly transformed all the newly freed slaves (in fact, all adult black males in the South) into voters. In that a State consists, not only of its government and its territory, but also of its people, the rapid swelling of the voter rolls made for an accompanying decrease in the power which the original voters had held. The constitutional arguments made against this enfranchisement of freed slaves were largely based upon considerations of equal suffrage; see Machen, at 177-81. Such arguments decried the diluted voting power of the previously all-white electorate in the South and contrasted the undiluted voting power of the almost completely white electorate of the States in the North. This situation was not lost upon the Radicals who were exclusively white Northerners whose constituencies were almost exclusively white.

It was a Radical point of argument that the South deserved any imaginable abuse because of its acceptance of slavery as an institution. This was the point at which abolitionists and the Radicals parted company. The just social cause of emancipation had not originally been advanced in order to crush the South. If any blame might be laid, it could only have been laid at the feet of the few who actually did own slaves. President Johnson's characterization of the First Reconstruction Act as "a Bill of Attainder" addressed the problem quite concisely. Where was the crime? If Congress had first passed, and the States ratified, the Thirteenth through Fifteenth Amendments with consequent statutes passed to define, enforce and give judicial jurisidiction over, crimes of slave-ownership, then certainly punishment would have been just upon those found guilty. But no specific persons could be found guilty because there were no specific statutes violated. The Reconstruction Act implied that the entire South was guilty of the crime of treason, without an actual finding in a court of law.

In whatever other manner the slaves might have been freed and then given all the rights which only Caucasians had enjoyed to that point in our nation's history, the path down which the Radicals dragged the rest of the country was the most reprehensible, the most unconstitutional and the most damaging. It was, at the same time, the most pragmatic way to seize power and to bring about the radical overturning of political, legal and economic foundations and conditions.

The technique of amending the Constitution in order to achieve the just goals of the abolitionists was a not a wrong idea. The authors of the Constitution made provision for the amending process because they knew that adjustments might have to be made. They were not to be made lightly or unwisely. Unfortunately, the just cause of emancipation was prostituted by the Radicals and their amendments have quietly and subtly brought about the tyranny of the federal governmental tyranny, the very result which the Constitution was meant to prevent.

* * *

The setting for the Civil War was charged with great emotional issues. The sides were polarized. The Mason-Dixon line was made to look like the Continental Divide.

grabbed most of the headlines and demanded most of the attention of ordinary people. But, the "about-to-become-super-rich," like J. P. Morgan, didn't care. Wars are always profitable times if you have no scruples and play both sides against the middle, the middle class that is. War profiteers never really care which side is right, or even which side wins, as long as they make their money.

The biggest problem was the President's desire to preserve the Union at all costs. Lincoln did not want to have a prolonged war. He didn't want to have war, period. When the war became inevitable, he tried to end it quickly and often. His moderate philosophy extended to his choices of Democrats for key positions in his administration, including George B. McClellan, Don Carlos Buell, and Henry W. Halleck, for the Army, and Montgomery Blair and Gideon Welles for his Cabinet. The Radical Republicans charged that Lincoln's government was permeated with Democratic treason, accusing these men of impeding the war.

Lincoln resolved, however, to abide by the Crittenden Resolution passed on July 22, 1861, which declared that:

> Congress, banishing all feelings of mere passion or resentment, will collect only its duty to the **whole** country; that this war is not waged on their part in any spirit of oppression, or for any purpose of conquest or subjugation, or purpose of overthrowing or interfering with the rights or established institutions of [the seceded] States, but to defend and maintain the supremacy of the Constitution, and to preserve the Union with all the dignity, equality, and rights of the several States **unimpaired**; and that as soon as these objects are accomplished the war ought to cease." (emphasis added)

This resolution was authored by Congressman John J. Crittenden, of Kentucky, but was initially blocked by Thaddeus Stevens, the House ringleader of the Radicals who weren't nearly so inclined to be gracious winners. However, both houses of Congress adopted the Crittenden Resolution as a covenant of the desire to restore the Union, not to crush the South. Fear of public criticism for lack of unity following the early Union embarrassments at the battle of Bull Run forced the Radicals to vote in favor of the resolution which they would repudiate with a vengeance later.

At that time, the easiest way to short circuit Lincoln's mild demeanor was through the officers in his Cabinet. With the aid of the Radical Republicans as their Congressional agents, the bankers were to have some success via that route. The Radical Republicans, or Jacobins, were the prime movers in the party and they had a great deal of power to block Presidential appointments.

The Radical platform consisted of immediate emancipation, seizure of all property of the rebels, the employment of freed slaves in all areas of the military, civil equality for the Negro and, only if necessary, political equality. The Radicals considered the freedman population and the whole issue of slavery as their ticket to power. Their desire, or rather the desire of their principal financial backers, was the economic subjugation of the South. The source of their funds was evident in the advocacy of tariffs for the protection of the Northern manufacturers, a national banking system, subsidies for railroad construction and an opening up of the public domain for resource development. In short, the Radicals were ready to, and eventually did, legislate the foundation of the Robber Baron era. The philsophically pure abolitionists would

The Radicals were a humorless, self-righteous group who, nonetheless, understood politics. Thaddeus Stevens controlled the House, while Benjamin Wade ruled in the Senate, along with Zachariah Chandler of Michigan and Charles Sumner of Massachusetts.

For the Eastern bankers, the Civil War meant a time to make their money off of the loans floated to Lincoln's administration through negotiations with Salmon P. Chase, Lincoln's Radical Republican Secretary of the Treasury. The Eastern bankers had a very good friend in Secretary Chase, who had been a U.S. Senator from Ohio, an organizer of the Republican Party along with William H. Seward and the first Republican Governor of Ohio prior to his appointment as Secretary of the Treasury. Through the Radicals, the Eastern banking establishment promoted the appointment of Chase. Politically, the Radicals also hoped that Chase would be able to siphon off some of the power and influence which Secretary of State William Seward held.

Banking tycoon Jay Cooke helped Salmon obtain $50,000,000 in loans from New York and Philadelphia in 1861 when expenses for maintaining McClellan's army in training shot from $1 million a week to $1 million a day. When the funds were exhausted in those banks, Jay Cooke and Company took over, becoming an adjunct to the Treasury. Cooke's brainchild was the United States Bond, the first official federal debt paper, which raised almost $2 billion on behalf of the Union war effort. Cooke, of course, benefitted correspondingly.

Secretary of the Navy Gideon Welles, a Democrat, observed the events of both the Lincoln and Johnson administrations, maintaining an objective perspective which was vindicated by the passage of time. Welles said that from Chase's policies there would "come a day of reckoning, and the nation will have to pay for all these expedients. In departing from the specie standard and making irredeemable paper its equivalent, I think a great error was committed. By inflating the currency, loans have been more easily taken, but the artificial prices are ruinous. I do not gather from Chase that he has any system or fixed principles to govern him in his management of the Treasury. He craves even beyond most others a victory, for the success of our arms inspires capitalists with confidence." What really "inspires capitalists with confidence"? Profit.

Chase also tried to make suggestions to Welles on how to run the war on the water, proposing an attack on a closed Confederate port. Like the bloodthirsty Radical that he was then, Chase criticized Lincoln for not elevating the hostilities to a higher level. When Welles "did not respond to this distinct feeler, . . . the conversation changed."

The Eastern bankers used their influence to pry Secretary of War Simon Cameron from the Cabinet, an ally of Seward. The Radicals railed about General George McClellan's lack of movement and Cameron was partially blamed for McClellan's measured pace. An agent for the banks told Radical Senator William P. Fessenden that Cameron didn't have "the confidence of the moneyied [sic] interests" and that the "[p]ublic good require[d] another man in his place." The "public" referred to was the "moneyied interests." They understood that the real profits from war could only be had through a bloodbath and they wanted to get on with it. The installation of a friendlier Secretary of War was the most pragmatic way to stir the pot.

In a turnabout, Cameron started to espouse the Radical line in the fall of 1861. Act-

to incorporate fugitive slaves into the fighting effort on behalf of the North. That was the Radical party line, intended to further inflame the already super-hot wartime emotions. In casting his lot with the Jacobins, however, Cameron turned from the one man who could actually fire him from his post, Lincoln. Acting upon the furtive advice of Democrat Edwin M. Stanton (who coveted the position held by Cameron and had managed to gain his confidence), Cameron recommended the creation of an army of freed slaves in his annual report to Congress, compounding this foolhardy act by rushing copies of the report to the newspapers before getting approval from the President. Lincoln recalled the report and had the suggestion deleted. Wise old Abe did not want to have the Southern armies any more inspired than they already were.

Stanton, maintaining a power base with the Democrats, slowly but surely undercut Cameron with the help of the Radicals. Stanton was simultaneously sabotaging the reputation of General McClellan with the same technique that he was using on Cameron. Stanton, needing McClellan's support to win the Secretary of War's office, pretended to give friendly advice to McClellan about the political machinations of the Radicals who were violently opposed to McClellan's lack of violence against the Southern armies. At the same time, Stanton, when in conference with the Radicals, blasted McClellan in front of that select audience. McClellan later realized that he had been set up by Stanton and said, "His purpose was to endeavor to climb upon my shoulders and then throw me down."

The Radicals' position relative to the actual war on the field verged on treason, and was most certainly well within the bounds of savage pragmatism. In their twisted sense of the public good, Union losses in battle were welcomed. Radical Congressman Charles Sedgwick of New York pontificated that, "We ought to be whipped into that humble frame of mind which will make us willing to get soldiers of any color, and enlist them without scruple even in the enemy's country." Wendell Phillips, an abolitionist philosopher from New England, offered up the blasphemous prayer, "God grant us so many reverses that the government may learn its duty." In the same vein, Charles Sumner suggested the blood sacrifice of America's sons, saying, "I fear our victories more than our defeats. There must be more delay and more suffering,—yet another 'plague' before all will agree to 'let my people go'; and the war cannot, must not, end till then." Chokes you all up, doesn't it? The term warmonger was never more appropriately applied than to these vultures.

Union forces, under the command of General Irvin McDowell, had been routed at the battle of Bull Run on July 21, 1861, prompting McDowell's replacement by McClellan, but the Union military forces had not distinguished themselves since. As a result of the festering political wound from military inaction, on December 5, 1861, the Radicals formed the Committee on the Conduct of the War, which became their Congressional soapbox for both criticizing those military officers who weren't bloodthirsty enough and for investigating, undermining and purging those who might actually want to have peace. Naturally, the members of the Committee were overwhelmingly Radical. Wade, Chandler, George W. Julian, Daniel Gooch, and John Covode, were Radical allies. Then Senator Andrew Johnson of Tennessee (who had refused to go along with the secession of Tennessee and stayed in Congress) was also a member. At that time, Johnson vigorously supported the war and was the foremost

Radical stronghold throughout the war, engaging in the kind of political war kibbitzing which became institutionalized in the Vietnam conflict. It quickly evolved into a military Inquisition or a Court of Star Chamber with secret hearings and outrageous charges of treason being sprung upon unsuspecting military officers called into to testify before the Committee.

On January 11, 1862, Secretary of War Cameron stepped down and, two days later, Stanton was tapped for the Cabinet. While Cameron had been inept, Stanton would prove to be positively dangerous. The Radicals, including the Radical newspapers, gave Stanton their full support. Chase and Senator Wade lined up votes in the Senate for his approval.

In the meantime, because Stanton had not publicly betrayed his Radical alliance, the conservatives of both parties, including Welles, fell in behind him, thinking to replace Cameron whose desertion to the Radicals had shocked them as it had the Radicals.

With such bipartisan backing, Stanton was approved easily. He was, at that point, in the most powerful position in the federal government other than the Presidency. He had also gotten next to a man that he had hated for a long time, having called Lincoln "the original gorilla," a "long-armed baboon" and a "giraffe" in the McCormick case in which both had been involved. When Stanton threatened to quit, Lincoln bowed out; see David Balsiger, *The Lincoln Conspiracy* (Sunn Classic Books, Los Angeles, 1977), at 15.

The Radical Republicans thus placed the man who was to do more for their cause than any other in Lincoln's Cabinet. Stanton was once again in federal office, having served as Attorney General under President James Buchanan. Stanton was also reunited with Seward, both of whom Welles accused of conspiring to betray the South. Buchanan had tried to preserve the Union with a program of moderation. Welles asserted that, "Both these men played a double part during the closing months of Buchanan's Administration. While ostensibly opposed, they had a secret understanding and were in constant communication. Stanton betrayed the South, and they know it." In December, 1860, the closing months of Buchanan's administration, South Carolina was the first State to secede.

Stanton had his other detractors. Congressman Albert G. Riddle, an Ohio Republican, was appalled at Stanton's disdain for the Constitution. Lumping Stanton together with Stevens and Wade, Riddle said that, "Of these . . . men, . . . it may truly be said that they were the most revolutionary men . . . since the days of the Adamses and Jefferson.... no scruple of the written Constitution troubled either of them. The conservative notion of preserving the Constitution as . . . the thing not to be touched, always and justly provoked their derision." It was Stanton's apparent belief that those who ruled were entitled to do what they willed with the Constitution. Riddle's assessment of Stanton, Stevens and Wade was completely accurate.

The following month, Radical Senator Charles Sumner, an early Congressional advocate of emancipation, presented his resolutions on Secession and Reconstruction, enunciating the theory that Southern States, by their acts of Secession, had given up all their rights under the Constitution and, thereby, had committed an act of political suicide. This political theory, the keystone of all Radical Reconstruction, was fed by

ments on some of Sumner's crazed ideas are pertinent and leave no doubt as to the Radicals' purpose:

> Sumner has introduced some resolutions which are revolutionary and wholly regardless of the Constitution. There is manifest intention to pull the Republic to pieces, to destroy the Union and make the Government central and imperious. Partyism, fanaticism rule. No profound, comprehensive, or enlarged opinions, no sense of patriotism, animates the Radicals. There are some patriotic and well-disposed Members, but they are timid, have no force or influence, no self-reliance or independence.

In February, 1862, Congressman Frederick A. Pike of Maine exhorted his Radical brothers to "tax and fight." Pike proceeded to make a typically blasphemous Radical quasi-religious statement: "And these three—Tax, Fight and Emancipate—shall be the Trinity of our salvation." On March 6, Lincoln, an advocate of gradual emancipation at the State level without the jarring effects of immediate, full-scale emancipation, delivered a message to Congress to that effect. The Radicals were not impressed. Pennsylvania Congressman John Hickman referred to Lincoln's message as "covert and insidious."

These were the opening shots in the legislative fight over the Confiscation Act with which the Radicals intended to strip the Confederates bare of most of their assets. The ostensible purpose was to "confiscate" the slaves from the slave-owners, but a more fundamental goal was obvious from other statements from Radical leaders. Senator Wade argued for a much tougher bill, rationalizing that, "When I have brought a traitor who is seeking my life and my property to terms, and when I have become bankrupt in my endeavors to put him down ..., I have no scruples about the property of his that shall be taken to indemnify me." Speaking as a representative of the Eastern banking interests, Wade's insistence that the South "indemnify **me**" takes on a much clearer meaning.

On July 17, 1862, the Radicals pushed through the Confiscation Act despite warnings that it was unconstitutional and that Lincoln would veto the bill. The day previous, Henry Cooke, who ran the Washington office of the Cooke banking empire, sent a letter to his brother Jay with a clear threat against Lincoln. Cooke wrote that if Lincoln vetoed the Confiscation Act as he had promised, "**there will be an end of him.**"

For the public record, Wade wasn't quite so blunt, but still let Lincoln know in no uncertain terms who would dictate to whom, blustering that, "The President cannot lay down and fix the principles upon which a war shall be conducted.... It is for Congress to lay down the rules and regulations by which the Executive shall be governed in conducting a war."

In the meantime during March, Stanton had contrived to take over command on the battlefield, relieving McClellan of his position as General-in-Chief and leaving McClellan in command of the Army of the Potomac only. Over the next four months, Stanton, with no military training whatsoever, planned war strategy. In July, General Henry Halleck, a retired engineering officer, was handed the position vacated by McClellan, but he was little more than an advisor.

That summer, the Radically-oriented Horace Greeley (of "Go west, young man, go west" fame) turned his guns on the South, converting the *New York Tribune* into the

and the release of all the non-Radical Cabinet members. Targeted for some of Greeley's darts was General McClellan. The General had fallen prey to a rather embarrassing Confederate maneuver over which the entire Radical coterie in Congress wanted to turn McClellan into cannon fodder. Counselling caution since assuming command, McClellan advanced on the defenses at Richmond, claimed to be bristling with heavy artillery. When the Union Army arrived after a leisurely advance, they found that the heavy artillery was closer to heavy timber. Logs painted black were the feared cannons. The Radicals knew a good thing when they heard it and wouldn't let go of McClellan's scalp.

The uproar over McClellan's slow advance into the fighting came to an initial climax when his command was turned over to General John Pope whose testimony before the Radically-controlled Committee on the Conduct of the War convinced the Radicals that he was sufficiently brutal to replace McClellan. Welles had perceived that the Radicals were conspiring with Stanton to have McClellan fail on the battlefield by transferring some of his troops to other commands and keeping fresh troops and materiel from reaching McClellan. The Army of the Potomac was transferred to Pope's command in August, 1862. Simultaneously, Stanton sent a letter to McClellan, saying, "No man had ever a truer friend than I have been to you and shall continue to be. You are seldom absent from my thoughts." McClellan was given the responsibility of defending the capital.

Shortly thereafter, Pope, who only talked a good military game, was routed at Manassas on August 30, 1862. In a rush to divert criticism from their military favorite son, and save his job and their political power in the Army, the Radicals falsely accused the officers in Pope's ranks who had been under the command of McClellan of being loyal to McClellan and of sabotaging Pope's strategy. One Radical accused McClellan of sneaking into Robert E. Lee's camp at night to receive his orders; T. Harry Williams, *Lincoln and the Radicals* (The University of Wisconsin Press, Madison, 1972), at 185. The accusations and the lack of support from Lincoln made McClellan lose heart and he became even more cautious than ever. However, on September 2, Lincoln brushed off the Radical insistence that Pope be kept in command. McClellan was reinstated but only until he proved unable to defeat the superior military mind of Robert E. Lee. On November 7, Lincoln relieved General McClellan from command completely, replacing him with General Ambrose Burnside, whose only real wartime accomplishment, other than military disasters, was having the fame of his side-of-the-head whiskers live on after him: "sideburns."

Sensing a need for more allies next to Lincoln other than just Chase and Stanton after election losses to the Democrats, the Radicals had continued to clamor for greater representation on Lincoln's Cabinet. They were like dogs yapping at Lincoln's heels, taking every opportunity to criticize Lincoln's conciliatory attitude toward the South. On December 17, 1862, the Radicals attempted to force Lincoln to appoint Radicals to all Cabinet posts, harping especially at Secretary of State Seward. They insisted upon Chase as Seward's replacement. After the rather inept Radical coup was foiled by some clever Lincoln maneuvering, both Seward and Chase offered their resignations. However, Lincoln refused to consider either resignation and both Secretaries stayed on. This was a foreboding of the Radically-controlled Congress'

counterparts in the French Revolution: "The denunciation is precisely the same as those launched against the Girondins by the Mountain in the old French Convention"; see Williams, at 206.

Senator Fessenden was completely aware how far outside the bounds of the the Constitution that the Radicals were going, saying that, "The story of the last few days will make a new point in history, for it has witnessed a new proceeding—one probably unknown to the government of the country"; Williams, at 213.

Seward, whose position was somewhere between the Radicals and Lincoln, was put in the same category by the Radicals who demanded everything their way. Stanton was considered their hero in the Cabinet for his espousal of a plan to transform the Southern States into an occupied enemy territory in perpetuity, under the control of military governors (appointed by the Secretary of War, naturally) and martial law (administered by the Secretary of War, also).

When Burnside was replaced by General Joseph Hooker in January, 1863, the Union Army went on the offensive. The victory at Gettysburg in June-July was a turning point in the war, coupled with the success of General Ulysses Grant at Vicksburg in April-July. Those military operations took some of the teeth out of the rabid attacks of the Radicals, but they were by no means asleep.

On December 8, 1863, Lincoln gave the Radicals a big target by revealing his forgiving Reconstruction plans which included granting amnesty to Southerners who would take an oath of loyalty, gradual emancipation to stretch out until the year 1900 and recognition of the governments of those States in which 10 percent of the voters according to 1860 elections took such an oath. The only further condition for the Southern States was an agreement to emancipation of all the slaves, which was, after all, the intent of the framers of the Constitution.

The Radical response was a predictable howl of protest. Representative Henry Davis led the attack in the House and Senator Benjamin Wade did likewise in the Senate. The Radicals claimed that the President's plan somehow usurped Congress' superior right to formulate Reconstructionist policy. And, of course, it was far too lenient in its merciful offer instead of threatening the obliteration of the South's pre-war social and economic structure. Nevertheless, Lincoln proceeded with his plan. When Tennessee, Louisiana, and Arkansas reformed their respective State governments during 1864, they were duly recognized by the President. Congress would then have the responsibility of certifying the new governments, and to admit their Congressional entourage into the legislative chambers on Capitol Hill. The Radical response, recounted in *Dyett v. Turner, supra*, was one of the darkest moments in our nation's history.

On July 2, 1864, the Radicals proposed their Reconstruction plan in the Wade-Davis Bill, which contained much stricter requirements for re-admission by the Southern States. The President pocket-vetoed that bill, issuing an explanatory statement on July 8, after the adjournment of Congress. This veto set the Radicals off again. On August 5, the bill's sponsors, Davis and Wade, whined over the President's action, stating that "a more studied outrage on the legislative authority of the people ha[d] never been perpetrated."

The elections were coming up and the Radical goal was a two-thirds majority which

moted himself for the candidacy, having lost out to Lincoln in 1860. Greeley provided plenty of free public relations, but the leaders of the Radicals, sensing that Chase wasn't exactly a darling among the people, held back their full support. On February 15, 1864, Welles wrote that Chase would probably "press his pretensions as a candidate."

On February 20, Chase's political campaign managers did precisely that by having a vicious diatribe against Lincoln, entitled the "Pomeroy Circular," published and circulated to the public in Senator John Sherman's franked envelopes. Chase offered his resignation again and, again, Lincoln refused. Chase retired in June and sank from public view for several months, disappointed that no one seemed to care. Welles felt that Chase would return to the public eye to support Lincoln.

The Radicals could only have been in an extreme state of agitation at that point. Lincoln's popularity had risen with the military successes of the Union Army even though they had lately had some problems. Congressman James A. Garfield could only comment, "I hope we may not be compelled to push him four years more." On the Democratic side, McClellan was projected as the Presidential candidate of the Party. As completely discontented as the Radicals were with Lincoln, they were positive that McClellan would undoubtedly be even worse, especially since he would be supported by Clement Vallandigham, one of the country's leading exponents of peace. Burnside had arrested Vallandigham the previous year to try to keep him quiet. Still, the Radicals thought that John C. Fremont, a previous candidate of the Republican Party in 1860 along with Chase, might be a viable candidate for the upcoming election.

On September 2, General William T. Sherman took his first big step on his march through Georgia by capturing Atlanta. Sherman, a conservative who approved Lincoln's moderate Reconstruction plans, had taken away the last hope of the Radicals for a shot at the White House through the electoral process, as Fremont withdrew on September 22.

Prior to the convention, Stanton tried to put a fast one past the President. On May 17, Stanton, probably through Lafayette Baker, issued a phony press release which was published by the New York World and the Journal of Commerce which proclaimed that Lincoln had called for an additional 400,000 troops to be drafted in one month.

Stanton ordered the New York Military Commander, General John Dix, to shut down the newpapers and arrest their personnel. Stanton then convinced Lincoln to issue his own proclamation stating essentially the same thing that Stanton's forgery had done. Lincoln cooperated at first, but then countermanded his order.

The outcome of the Republican convention was a foregone conclusion. The election turned out to be one-sided as Lincoln trounced McClellan, 212 electoral votes to 21. The popular vote was much closer, 2,200,000 to 1,800,000, indicating that a goodly portion of the country was favorably disposed to an even more peaceful settlement with the Confederacy than Lincoln had proposed. The Radicals were relatively silent about the results. Their one victory in the election was having Andrew Johnson on the ticket as Vice-President. Another victory came on December 6, when the Radicals prevailed upon Lincoln to bring Salmon P. Chase out of mothballs and appoint him

date the President had received for staying the course. Staying the course meant that the Reconstruction plans of the Radicals for economically and socially annihilating the South for the benefit of the Eastern bankers would be in jeopardy. One grandstand play was made to find grounds for impeaching Lincoln.

During the war, cotton had become an extremely valuable commodity for the obvious reason that the South grew all of it. They were, naturally, not going to officially share with the North. Whatever cotton was available came from imports and from the black market. The trade in cotton attracted many who wanted to make a profit fast. Lafayette Baker apparently amassed quite a sizable personal fortune trading in cotton and similarly scarce items. Cotton passes, which represented official permission to trade and transport the commodity, were issued by the Treasury Department to prevent black marketeering and speculation from getting out of hand. The Radicals knew Ward Lamon and Orville Browning, both friends of Lincoln, had been involved in the cotton trade. It's likely that Baker supplied Stanton with that information.

Radical Congressman E. B. Washburne chaired an investigation, started in January, 1865, into cotton passes in an effort to link the President's friends to corrupt cotton trade. Lincoln refused to submit to the committee's probe, but the Treasury Department supplied its list of those to whom cotton passes had been issued. Lamon and Browning were not on the list. The investigation was abandoned soon thereafter.

Lincoln was no fool. He realized that the Radicals were going to become even more vociferous about their plans to flatten the South. And he knew that the Radicals knew that he wasn't about to let their plan be implemented, unless it was over his dead body. His secret plan involved giving the generals in the field the power to so arrange an armistice for conquered territories such that the State governments could quietly reorganize before Congress could assemble in December. At that point, resistance would be political suicide, tending to make the Radicals look the ranting, vengeful maniacs that they were.

On March 27, 1865, the President met with Grant, Sherman and Admiral David D. Porter on a riverboat where he issued secret orders to them to permit the Southern States surrender on the basis of the situation as it existed prior to the start of the hostilities. Lincoln had told Grant to "[g]ive Lee anything he wants if he will only stop fighting." Sherman carried out Lincoln's orders loyally even after his President's murder, signing just such a truce with Confederate General Joseph E. Johnston on April 18, 1865.

When Sherman returned and revealed the covenant, the Radicals reverted to form, protesting like Banshees. Stanton convinced the rest of the Cabinet and now-President Andrew Johnson to disapprove the peace treaty. Stanton, without the approval or knowledge of Johnson, issued a press release which asserted that Sherman's treaty "gave terms that had been deliberately, repeatedly, and solemnly rejected by President Lincoln, and better terms than the rebels had ever asked in their most prosperous condition."

On April 10, the President had journeyed to Richmond to view the carnage. While he was there, he ordered General Godfrey Weitzel, in command of the occupation of Virginia, to let the Virginia Legislature reorganize. If it would then vote to withdraw its troops from the war and rejoin the Union, he would recognize it as the *de facto* gov-

death. Stanton, upon learning of Lincoln's plans, sent a telegram to General Weitzel countermanding Lincoln's order. Stanton then told Baker, "We will let Lucifer tell [Lincoln who countermanded his order]." The countermand did not reach the newspapers in time, however, and the story of the President's generous offer to Virginia went to print.

The next day when they had read the story, the Radicals flew into a rage demanding wholesale hangings of Southerners. They resurrected the atrocities committed by the Southern forces as justification for steamrolling the South without mercy.

One incident was used to particularly good effect by the Committee on the Conduct of the War. Always on the lookout for juicy propaganda, Confederate General Albert Pike provided them with some of the best. Pike was the M. P. Sovereign Grand Commander of the Supreme Council of the Masons, Southern Jurisdiction of the United States, a worshiper of Lucifer, and was accused of treason by both North and South during the war. Many Southerners insisted that Pike bore a great deal of responsibility for the Confederate defeat, having been in a position of command when the war in the Western States was decisively lost. During a battle at Pea Ridge, Arkansas, in March, 1862, Pike was in on the wing of the main forces. The commanding general believed that Pike's decision to do absolutely nothing at the most critical juncture of the fight cost the battle which ultimately resulted in the loss of the Western front. Pike's troops engaged in an even more infamous escapade during that same battle.

Pike commanded a regiment of Indians. After a victory in a skirmish against Union forces at Pea Ridge, word reached Pike that some of the Cherokee under his command had decided to relieve some of their victims of their hair. Had Pike not thereafter reported the incident, nothing would have ever come of it. However, report of the incident reached Senator Wade who immediately launched an investigation into the matter, sending a request for further information to Union General Samuel Curtis in Arkansas.

On May 21, Curtis sent his findings to Wade, stating that "large forces of Indian savages were engaged against this army at the battle of Pea Ridge, and that the warfare was conducted by said savages with all the barbarity their merciless and cowardly natures are capable of." The Radicals were ecstatic with Curtis' response; see Robert Lipscomb Duncan, *The Reluctant General* (E. P. Dutton, New York, 1961), at 225-31. There were even rumors of England and France entering the war on the side of the Union partially due to the barbarism of Pike's charges.

On April 14, 1865, Lincoln held a Cabinet meeting at which he said, "If we are wise and discreet, we shall reanimate the states and get their governments in successful operation, with order prevailing and the Union established, before Congress comes together in December." He was still singing the same tune of moderation, going further in saying, "No one need expect me to take part in hanging or killing these men, even the worst of them." During that Cabinet meeting, Stanton was to have presented another version of the Radicals' blitz-the-South Reconstruction plans. He never got the opportunity to present it to Lincoln. Ever. That evening John Wilkes Booth ended all of the problems which the Radicals had with Lincoln.

Stanton seized power and became a virtual dictator. The suspicions of a Southern conspiracy to assassinate the beloved President were fed and the Radicals' Reconstruc-

The Radical dictator, Secretary of War Edwin M. Stanton, was not exactly in a position which was completely foreign to him. He had, under the excuse of wartime emergency and with the enthusiastic encouragement of the Radicals, assumed enormous powers. Neither he, nor any of his allies, had the least compunction to refrain from brutalizing the Constitution during the war.

The period following Lincoln's assassination was not appreciably different from any other similar disaster; it was filled with general confusion and afforded a great opportunity to concentrate the elusively invisible commodity of power into a few hands. That Stanton and the Radicals took advantage of that opportunity cannot be disputed. The question is whether Stanton and the Radicals knew ahead of the event that such an opportunity was going to present itself at, perhaps, the most opportune time possible for their fortunes. Consider the following.

Lafayette C. Baker had been Stanton's chief instrument in spying upon the whole country. He had been Stanton's confidante in the most bizarre and unconstitutional programs, having carried out Stanton's orders effecting those programs. When Baker was caught spying on President Johnson, he was discharged from the Army on February 8, 1866. Baker left Washington claiming Stanton had sent him to spy on Johnson.

The following year, Baker's book, entitled *History of the United States Secret Service*, was published and dropped an embarrassing bomb on Stanton, revealing that Baker had delivered the diary of John Wilkes Booth to Stanton shortly after delivering his body. The diary surfaced from War Department files and with it Booth's amazing contemplation "to return to Washington and . . . clear [his] name." The diary's existence and possession by the War Department, as advertised by Baker, compelled the House of Representatives to initiate an investigation in May, 1867. Baker was brought in to testify and promptly dropped another bomb—18 pages were missing from Booth's diary, whereas when he had turned it over to Stanton, it had been complete.

Judge Advocate Joseph Holt, who organized the evidence against Booth's alleged co-conspirators and presided at their trial, testified that when he had received it, the pages were already missing. Stanton asserted that after examining the diary with great care, he noticed that some pages had been removed. Lt. Col. Everton J. Conger, who had been one of Baker's men participating in the hunt for Booth, couldn't remember. Baker maintained his position.

At the end of that year, Baker suspected a plot against his life by his "old friends." The first successful, overt attempt to assassinate him came on December 23, 1867 when he was stabbed. Baker's wife, Jenny Baker, wrote in her diary about attacks upon her husband. On January 2, 1868, she wrote, "Lafe's shoulder is healing but he complains of soreness. He'd been shot at just before Christmas.... Splinters hit him in the shoulder." He was then roughed up by several men who failed in an effort to drag him off the street into a waiting carriage after which his house was guarded by police for several weeks. Some of Baker's other acquaintances testified that he was constantly afraid for his life in his last months. In those months, Baker wrote a coded manuscript which he apparently regarded as his last testament. In it, he wrote, "I am constantly being followed. They are professionals. I cannot fool them. 2-5-68." On the same date, Baker further wrote:

not the other but they went on for that day, waiting for that final moment when with pistol in his hand, one of the sons of Brutus could sneak behind that cursed man and put a bullet in his brain and lay his clumsy corpse away.

As the fallen man lay dying, Judas came and paid respects to one he hated, and when at last he saw him die, he said, 'Now the ages have him and the nation now have I' [sic] But Alas [sic] as fate would have it Judas slowly fell from grace, and with him went Brutus down to their proper place. But lest one is left to wonder what has happened to the spy, I can safely tell you this, it was I.

LAFAYETTE C. BAKER 2-5-68

See Baker's cipher-coded book, courtesy of Dr. Ray Neff, Indiana State University, Terre Haute, Indiana.

Baker later also wrote a less cryptic message about his "old friends," which stated:

It was on the tenth of April, Sixty-five when I first knew that the plan was in action. Ecert [sic] had made all the contacts, the deed to be done of the fourteenth. I did not know the identity of the assassin but I knew most all else when I approached E.S. [Edwin Stanton?] about it. He at once acted surprised and disbelieving. Later he said, "You are a party to it too. Let us wait and see what comes of it and then we will know better how to act in the matter." I soon discovered what he meant that I was a party to it when the following day I was shown a document that I knew to be a forgery but a clever one, which made it appear that I had been in charge of a plot to kidnap the president, the vice-president being the instigator. I then became a party to that deed even though I did not care to.

On the thirteenth he discovered that the president had ordered the Legislature of Virginia be allowed to assemble to withdraw that states troops from action against the U.S. He fermented immediately into an insane tyrade. Then for the first time I realized his mental disunity and his insane and fanatical hatred for the president. There are few in the War Department that respect the president or his strategy but there [are] not many who would countermand an order that the pres[ident] had given. However during that insane moment he sent a telegram to Gen. Weitzel countermanding the presidents [sic] order of the twelfth. Then he laughed in a most spine chilling manner and said, "If he would to know who recinded [sic] his order we will let Lucifer tell him. Be off Tom [perhaps Eckert] and see to the arrangements. There can be no mistakes."

This is the first th[at] I knew that he was the one responsible for the assassination plot. Always before I thought that either he did not trust me, for he really trusted no one, or he was protecting someone until it was to his benefit to expose them. But now I know the truth and it frightens me no end. I fear that somehow I may become the sacrificial goat.

There were at least eleven members of Congress involved in the plot, no less then twelve Army officers, three Naval officers and at least 24 civilians, of which one was a governor of a loyal state. Five were bankers of great repute, three were nationally known newspaper men and eleven were industrialists of great repute and wealth. There were probably more that I know nothing of. The names of these known conspirators is presented without comment or notation in the first volume of this series. Eighty-five thousand dollars was contributed by the named persons to pay for the deed. Only eight persons knew the details of the plot and the identity of the others. I fear for my life. LCB.

poisoning, although no one else who had eaten the same food became ill. He was later diagnosed as having typhoid fever which recurred several times until his death on July 3, 1868. The same doctor who had diagnosed his ailment as typhoid fever indicated that Baker's cause of death was "meningitis," necessitating an immediate sealed burial.

The events of Baker's last year, interwove themselves with Andrew Johnson's impeachment. On August 12, 1867, Johnson first tried to remove Stanton from office, suspending him and replacing him with General Grant.

On January 13, 1868, Stanton's Radical allies in Congress officially restored him. On February 21, Johnson removed Stanton again. Ten days later, the Radicals in the House adopted nine articles of impeachment and two the following day. The trial in the Senate ended in acquittal on May 26, 1868.

The previous year, during the course of the Radicals' contemptible investigation into the impeachability of President Andrew Johnson, the investigators commented on Baker's reputation. This man, upon whom had been placed so much reliance by the Radical Secretary of War, Stanton, and by the Radical-dominated Committee on the Conduct of the War, was positively excoriated as untrustworthy.

> And there can be no doubt that to his many previous outrages, entitling him to an unenviable immortality, he has added that of wilful and deliberate perjury; and we are glad to know that no one member of the committee deems any statement made by him as worthy of the slightest credit. What a blush of shame will tinge the cheek of the American student in future ages, when he reads that this miserable wretch for years held, as it were, in the hollow of his hand, the liberties of the American people.

The Radicals had not the slightest scruples about using Baker's talents to further their own ends. In fact, the Radicals had been the employers and Baker the employee. Why had they decided at that juncture to separate themselves from his memory? Surely they understood that too many documents and witnesses existed to testify to Baker's iron links to the Radical cause, especially to Stanton.

The Baker document has been questioned by some writers, none of whom have ever seen it. It was, however, authenticated for Baker's handwriting by an expert with the Pennsylvania State Police Department's Questioned Documents Center. No one has yet to refute the testimony. Dr. Ray Neff also purportedly has evidence which indicates that Baker was slowly poisoned with arsenic.

Stanton was conveniently silenced on December 24, 1869, four days after the Senate had confirmed his appointment by President Grant to the U.S. Supreme Court. The man who had done so much to cover up the facts surrounding the assassination of President Lincoln would no longer be able to help bring any calm to the swirling currents and crosscurrents of those events.

* * *

Although many writers have tried to unravel the tangle of schemes which finally enveloped Abraham Lincoln, this much is certain:

1. The Radicals and their financial backers, the Eastern bankers, had more to lose from a continuation of the Lincoln administration and his conciliatory policies than

economic and political annihilation of the South and the powerful Southern cotton interests. Their legislative programs embodied every advantage for the Eastern bankers and their soon-to-be robber baron clients. The prize at stake was the entire South which also represented the major gateway to the enormous financial promise of the Southwest. The rapacious men who were to lead the charge of the new era of Eastern banking influence were already being spotted and groomed for duty as the war raged. J. P. Morgan, who would turn out to be the best plunderer of them all, was proving his mettle by defrauding the Union Army.

The groundwork for Eastern control of all the railroads was being laid over the innocent bodies of the young men of both the North and South. Their unknowing work on behalf of these power-crazed, money-mad beasts was grimly carried on all over the South. The Southern landscape was described as being "in a state of semi-ruin, and plantations of which the ruin is for the present total and complete." The powerful cotton interests were no more. A report on the condition of the railways of the South, "The Wreck of the Railways," House Report no. 34, 39th Congress, 2nd Session, 1865, stated:

> From Pocahontas to Decatur, [Alabama] one-hundred and fourteen miles, almost entirely destroyed, except the road-bed and iron rails and they [sic] in very bad condition— every bridge and trestle destroyed, cross-ties rotten, buildings burned, watertanks gone, ditches filled up, and track grown up in weeds and bushes; not a saw-mill near the line; the labor system of the country gone [sic]. About forty miles of the track was burned, cross-ties entirely destroyed, and rails bent and twisted in such manner as to require great labor to straighten, and a large portion of them requiring renewal...
>
> That portion of the road [in Mississippi] not having received any attention since 1862, it became enveloped with briers, bushes, and grass, the undisturbed growth of three years, thus causing .. the decay of the pine timber used in its construction. There was scarcely a single bridge on that section that was not wholly or in part, destroyed by fire, or rendered unfit for use by decay. Of the cross-ties on this section, fully three fourths have to be replaced to render the road safe for the transit of cars and locomotives...
>
> Of the splendidly equipped road .. of the 49 locomotives, 37 passenger cars, (many of which had never been used,) and 550 freight, baggage, and gravel cars, there remained fit for use, though in a damaged condition, between Jackson and Canton, 1 locomotive, 2 second class passenger cars, 1 first class passenger car, 1 baggage car, 1 provision car, 2 stock and 2 flat cars.

The report went on rather monotonously about the whole South. The next two decades proved out the legislated intent of the Radicals. The railroad robber barons rolled in over the economic carcass of the plantations. That postwar era was destined to spawn the likes of Philander Knox, spiritual descendant of the Radicals. They were all men willing to do the dirty work of the super-rich.

2. The South had everything to lose by Lincoln's removal, whether by death or by any other means. The President had shown that the South had nothing to fear from Abraham Lincoln. Without Lincoln to hold back the powerful Eastern banking interests, the Civil War would have been the bloodbath that the French Revolution had been and which the American branch of the Jacobins had wanted it to be. It turned into a horrible slaughter despite Lincoln's efforts.

picked over by the Eastern bankers as planned. That program went ahead virtually without any hitches, except one.

3. In *Dyett v. Turner, supra*, the Court described some of the conditions incident to the ratifications of the Fourteenth and Fifteenth Amendments. The Court did not explain the issue of the associated impeachment of President Andrew Johnson.

The Radicals had been responsible for the presence of Johnson on the Republican ticket with Lincoln, even though Johnson was ostensibly a Democrat. From their experiences with him on the Committee on the Conduct of the War and their knowledge of his record of Radical behavior as provisional governor of Tennessee, the Radicals believed that Johnson would be a strong ally who obviously would become so much more powerful as the President. The Radicals thus had a man after their own stony hearts a heartbeat away from the highest office.

When Johnson ascended to the White House over the body of Lincoln, they saw him as "a godsend to the country." One Radical told Johnson that, "Lincoln's death is like a blessing from heaven." What they didn't really understand about Johnson was that his attitude toward the issue of slavery didn't sprout out of the same polluted soil as that in which the Radicals had. Johnson was fundamentally anti-aristocrat, not anti-slavery. He believed that the wealthy slave-owners were responsible for the evils which had beset the South. The behavior which he had exhibited which the Radicals found to be so likeable was actually totally antithetical to the men who backed the Radicals, the wealthy Northern industrialists and their bankers.

In 1863, while military governor of Tennessee, Johnson had said, "Many humble men, the peasantry and yeomanry of the South, who have been decoyed, or perhaps driven into the rebellion, may look forward with reasonable hope for an amnesty. But the intelligent and influential leaders must suffer"; see McKitrick, at 140. After he had become President, Johnson told a group of Virginians: "You know perfectly well, it was the wealthy men of the South who dragooned the people into Secession"; see McKitrick, at 139. Andrew Johnson "was an enemy of bondholders, national banks, monopolies, and a protective tariff," all the favorite things of the Radical bankrollers; see McKitrick, at 367.

All through the month of May, 1865, as the nation mourned their fallen President, Johnson began to behave in a most disturbing fashion, at least as far as the Radicals were concerned. On May 29, Johnson turned the stomach of every Radical in the country. He announced his plan of reconstruction, but, as far as the Radicals were concerned, he might as well have been Abraham Lincoln resurrected because the words were his.

Johnson's reconstruction proclamations marked the start of what was, perhaps, the darkest period in American politics which ended in the utterly disgraceful conduct of the Radicals in impeaching and, then, attempting to convict Johnson, on spurious charges arising from Johnson's insistence that Edwin Stanton vacate the office of Secretary of War.

Ever since President Johnson had made his true intentions known, Stanton had been leaking Johnson's plans to his Radical allies in Congress. When the Radicals suspected that Johnson was considering turning Stanton out of the Cabinet, they passed the Tenure of Office Act on March 2, 1867, which impudently proposed to deny the

tion would have been ill-timed at that point.

In the meantime, Welles wrote that Congressman Stevens "took occasion to sneer at those who still clung to the remnants of the shattered Constitution, which he ridiculed as a thing of the past. He is one of those who never regarded it as more obligatory than the resolutions of a last year's party convention. Its overthrow and destruction he would consider a party triumph"; see Welles, at 132-33. He further wrote, "There is a despotic tendency in the legislation of this Congress, an evident disposition to promote these notions of freedom by despotic and tyrannical means"; see Welles, at 432-33.

4. Stanton and his underlings in the Secret Service did a first rate job of obfuscating the events surrounding Lincoln's murder. They could hardly have done a better job than if they were trying. They certainly did a better job of obfuscation than protection which had been their responsibility.

During the early scramble after the assassination the commercial telegraph lines from Washington, D.C., were inoperative for two hours. The only line available was under the control of Major Thomas Eckert, Stanton's aide. It wasn't until four hours later that Stanton managed to issue the first press release which did not include the name of the assassin. Stanton did not bother to use the military lines. And Eckert could not be found.

Although Stanton had been warned about an attempt upon Lincoln's life, he denied Lincoln's specific request to have the powerfully-built Major Eckert accompany be his bodyguard at Ford's Theater and, then, failed to offer a substitute which was a duty devolving upon the Secretary of War. Nor was any blame laid upon the Washington policeman, John F. Parker, who did accompany the Lincolns to the theater, but who negligently left the President's rear unguarded when he decided to watch the show himself. Furthermore, Stanton practically insisted that General Grant and his wife, who likely would have been accompanied by their own bodyguard, cancel their acceptance of Lincoln's invitation to attend Ford's that evening.

During the critical early stages of that evening, Stanton promoted the assassination as a grand conspiracy hatched in the Confederacy. That particular unsupported allegation was kept alive until the trial of eight alleged Booth co-conspirators.

When Major James R. O'Beirne reported that he believed that he was closing in on the assassin, the War Department ordered him back. Thereafter, Lafayette Baker was put in charge of finding the assassin. The general order was issued to bring him back alive. When Baker's men closed in on the man alleged to have been Booth, trapped in a barn late at night, a soldier with a history of mental disorders killed him with a single shot in the neck at thirty paces through a crack in the barn by the relatively dim light of a smoldering blaze while the target was starting to run, so the story went. Lucky shot.

Eight alleged Booth co-conspirators were picked out of the thousands of suspects who were arrested and questioned by Baker and Wood at the Old Capitol Prison. These eight were given a military trial with no opportunity for appeal. The military tribunal was nothing but a kangaroo court and the eight were quickly found guilty and four, including one woman, were quickly hanged. The other four were sent to prison. It was later discovered that Baker was running seminars to teach prosecution

in the Supreme Court at the time and believed to be headed for a decision holding military trials of civilians during peacetime to be unconstitutional. It did, but obviously too late for the eight. Based upon the flimsy evidence used to convict these alleged co-conspirators, mostly conjured by Baker and Wood, it's likely that none would have been convicted given a civilian trial and decent counsel. As President Johnson left office, the three survivors were granted full, unconditional pardons.

Booth's diary was allegedly taken off the body of the man claimed by Baker's men to be Booth. This diary found its way into the hands of Stanton and Judge Advocate Joseph Holt who presided over the conspiracy trial. This diary was never presented at the trial and when it surfaced later it was missing the first eighteen pages. The claim was made that Booth had been using the pages as memos. After all, the rationalization went, and still goes, it was an 1864 diary. Nevertheless, the entries made by Booth started with April 17, 1865, three days into the manhunt for Booth. The stubs of the missing pages appear to have been carefully made almost to the binding and all at once. Unless Booth was so fastidious that, while on the run with a broken leg, he took care to slice each missing page off one by one along precisely the same line, it seems much more likely that someone else removed those pages. Congressman Ben Butler of Massachusetts demanded to know, "Who spoliated that book?" Nobody was in any hurry to answer and everybody who admitted touching it claimed that when they had it all the pages were missing. Butler made the intimation that Johnson had suppressed the diary.

The hearing held to determine the identity of Booth's body could manage to summon no witness intimately acquainted with Booth. A doctor named May who had treated Booth previously for a neck tumor identified the left leg which Booth had broken jumping on the stage at Ford's as a right leg and, at first, stated that he couldn't believe that the corpse was that of the same man who he knew to be Booth. The handwritten transcript of that doctor's testimony was altered to conform to match the corpse. Dr. May later wrote, "Never in a human being had a greater change taken place from the man whom I had seen in the vigor of life and health than that of the haggard corpse which was before me with its yellow and discolored skin, its unkempt and matted hair, and its facial expression, sunken and chapped by the exposure and starvation it had undergone... The right limb was greatly contused and perfectly black from a fracture of one of the long bones of the leg"; Balsiger, at 252-53. The corpse was then buried in a location known only by Baker and the handful of his men who transported it and Stanton.

* * *

All the foregoing could, of course, be construed to have been a set of an incredibly inept series of legal, political, investigative, medical and historic accidents.

The Solicitor of the State Department under Philander Knox used the ratification processes in the Fourteenth and Fifteenth Amendments as precedent for the Sixteenth Amendment. If these amendments may be used as precedent, then it must be said that military coercion of State Legislatures is justified in the amending process, that denial of Congressional seating to delegations from any State thought to be not to deserve their representation is justified in the amending process, that the acceptance

These are the precedential legacies of the Fourteenth and Fifteenth Amendments.

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Baker's cipher-coded book, courtesy of Dr. Ray Neff, Indiana State University, Terre Haute, Indiana.

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Interview with Dr. Ray Neff, Indiana State University, Terre Haute, Indiana, March, 1986.

The fraud which was so pervasive in the purported ratification of the Sixteenth Amendment has presented a major dilemma for all federal judges with even a modest tenure. Their dilemma is a problem of how best to escape the consequences of this newly discovered fraud because the consequences are as far-reaching and pervasive as the fraud. Each of them has been put in jeopardy by the awful truth revealed in *The Law That Never Was*, Vol. I, because each of them has, during his or her term on the bench, managed to step on some poor victim for the violation of a law that never was. Even those federal judges who are virtual newcomers have a considerable dilemma to face, namely, whether they wish to become a full initiate in the brotherhood of the federal bench by entangling and inculpating themselves in the continuing and ongoing fraud of the federal income tax.

Why did we call the first book *The Law That Never Was* anyway? Because the legal doctrines of fraud and of unconstitutional statutes dictated the title. Absent the provisions of the Sixteenth Amendment excusing Congress from laying direct taxes only by apportionment, any judicial intervention in cases involving federal income taxation has been completely without jurisdiction. In other words, no judge has ever had justification in law to allow the prosecution of, or to try or sentence anybody for, the violation of so-called federal income tax statutes. Neither have they ever had jurisdiction to allow anyone's property to be stolen from them via those same statutes. The legal doctrine of jurisdiction which is involved here is relatively simple (we have previously discussed this issue, but it is restated here under a different perspective). Fraud nullifies every transaction which is affected by such fraud. 37 Am.Jur.2d 8 states:

> Fraud vitiates every transaction and all contracts. Indeed, the principle is often stated, in broad and sweeping language, that fraud destroys the validity of everything into which it enters, and that it vitiates the most solemn contracts, documents, and **even judgments**. Fraud, as it is sometimes said, vitiates **every** act, which statement embodies a thoroughly sound doctrine when it is properly applied to the subject matter in controversy and to the parties thereto and in a proper forum. (emphasis added)

An unconstitutional statute is null and void. Chief Justice Marshall, commenting in *Marbury v. Madison*, 1 Cranch 137, 180 (1803), said:

> [I]n declaring what shall be the **Supreme** law of the land, the **constitution** is first mentioned; and not the laws of the United States generally, but those only which shall be made in **pursuance** of the constitution, have that rank.
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> * * *
>
> [A] law repugnant to the constitution is void; and [the] **courts**, as well as

Moreover, the voiding of an unconstitutional statute goes all the way back to the time at which the statute first saw the legislative light of day. Such a statute is considered to have never existed in law and, therefore, the requirement to obey it has never existed either. 16 Am.Jur.2d 256 states:

> If a statute is unconstitutional or if its application is unconstitutional, it is in reality not a statute, but is wholly void and ineffective for any purpose since its unconstitutionality dates from its enactment and not merely from the date of a decision upon it . . .
>
> Likewise, it is also stated that an unconstitutional statute confers no duties or rights, creates no office, bestows no powers or authority on anyone and affords no protection to anyone and justifies no acts performed under it. No one is bound to obey it.

The immense fraud in the ratification of the Sixteenth Amendment nullifies that amendment. Without that amendment, the current income tax statutes are unconstitutional and, therefore, null and void under the doctrine expressed in *Marbury* and must be considered to have never existed in law. The result is that no federal official, whether administrative, judicial or prosecutorial, has ever had valid authority to either assess or collect an income tax under nonexistent federal income tax statutes, or to prosecute or to try anyone for violating nonexistent federal criminal income tax statutes, or to render judgment against any one for either category of nonexistent federal income tax statutes. They have been, from the very legislative inception of the income tax provisions in the Internal Revenue Code, wholly without jurisdiction because those provisions have been without proper constitutional foundation.

Ordinarily, judges are accorded what has been termed "absolute immunity" from suit for any of their judicial decisions. In other words, no matter how vicious, or malicious, or improper the behavior of a judge in his courtroom, he will not be held liable for damages for any such wrongdoing, at least not by a brother judge; see Frank Way, *A Call for Limits to Judicial Immunity*, Judicature, April 1981.

By the pronouncements of the various courts, the only Achilles' heel for judges exposing them to claims for monetary damages is a wrongful assumption of jurisdiction over a case to the detriment of any of the parties in the case. Contrary to the history promoted by the American judiciary, this Achilles' heel is the relatively recent concoction of the U.S. Supreme Court in *Bradley v. Fisher*, 13 Wall. 335 (1872). This one juristic vulnerability is called a "single, bright-line exception"; see *Sparks v. Duval County Ranch Co. Inc.*, 604 F.2d 976, 980 (CCA5, 1979). The basis for it is quite simple—judges are also required to live under the law. In *United States v. Lee*, 106 U.S. 196, 220 (1882), the Court stated:

> No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All officers of the government, from the highest to the lowest, are creatures of the law, and are bound to obey it.

In *Sloan Shipyards v. U.S. Fleet Corp.*, 258 U.S. 546, 566 (1921), the Court further held:

> But the general rule is that any person within the jurisdiction always is amenable to the law. If he is sued for conduct harmful to the plaintiff his only shield is a constitutional rule of law that exonerates him . . . An instru-

Osborn v. Bank of United States, 9 Wheat. 738, 842, 843; *United States v. Lee*, 106 U.S. 196, 213, 221.

However, the judiciary still chafes at this small bit of jurisdictional responsibility, the lonely exception with which the judiciary has burdened itself, to accepting liability for their wrongs. *Stump v. Sparkman*, 435 U.S. 349 (1978), narrowed even this small crack through which a party injured by a judge could squeeze to gain some measure of justice from the guilty party. In *Stump*, the U.S. Supreme Court held that as long as general jurisdiction could attach, the total lack of common law or statutory authority excused a judge's abusive and tortious actions on the bench. Linda Sparkman, allowed to be sterilized at 15 years of age by Judge Stump under a petition filed by Linda's mother claiming she was promiscuous, was thus left totally unable to have children in the future and totally without redress. *Stump* proves the contention, that this "rule" of judicial immunity (created by judges to insulate themselves from their own wrongdoing) is "a harsh one, laden with potential for unredressed wrong"; see *Sparks, supra*.

Judicial immunity from claims for damages is supposed to be intended "to preserve the judge's independence of mind and judgment, for it is upon the manifest necessity to protect these, and on that alone, that the rule rests"; see *Sparks, supra*. This is a noble and desirable goal. However, the men who sit as federal judges in this country have, in federal tax cases, fulfilled "the potential for unredressed wrong" far beyond the furthest boundaries imagined in *Sparks*. The case of Federal District Court Judge Crocker in San Francisco illustrates how a judge's "independence of mind and judgment" can be subverted because of judicial immunity.

Judge Crocker was approached by Internal Revenue Service Regional Commissioner Homer O. Croasmun in February 1973, and told that prosecution of tax protestors, in general, were cases in which it was important that prison sentences be given as a deterrent. Judge Crocker, as well as several other federal judges, apparently warmed to that particular suggestion when informed by I.R.S. agents that the "Tax Rebellion Movement" was becoming a grave situation. Judge Crocker apparently believed that cooperation with the Gestapo tax collectors was less risky, financially speaking, than protecting the rights of a "tax protester" defendant. The poor victim defendants could not, under the "rule" of judicial immunity, do anything to Judge Crocker for acts committed under the supposedly discretionary functions of the court—denials of defendants' objections, subtle cooperation with the prosecution, suppression of evidence, etc. Judge Crocker might, of course, be quite adversely affected in his pocketbook by an I.R.S. audit. The choice was easy for Judge Crocker as with all other federal judges—side with the guys who could rifle his assets.

The predicament, implicit in the discovery of the Sixteenth Amendment ratification fraud, for all federal judges who have damaged innocent victims in their courtrooms through their unlawful assumption of jurisdiction over federal income tax cases, whether civil or criminal, is summed up in *Hopkins v. Clemson College*, 221 U.S. 636, 644 (1910), which stated:

> [A] void act is neither a law nor a command. It is a nullity. It confers no authority. It affords no protection. Whoever seeks to enforce unconstitutional statutes, or to justify under them, or to obtain immunity through them, fails in his defense and in his claim of exemption from suit.

nich never was. In addition, federal judges do not have "general jurisdiction" over ything, unlike many State judges. Their jurisdiction is limited to those statutory ovisions which specifically exist giving them jurisdiction. Thus, whenever federal dges have, in the past, confirmed an assessment for federal income taxes, they did so thout the existence of any law justifying their actions, that is, they did so without risdiction, to the obvious detriment of the party forced to pay a nonexistent federal come tax. Likewise, whenever federal judges have, in the past, allowed the prosecu-on of those charged with violations of the criminal income tax statutes, they did so thout the existence of any law justifying their actions, that is, they did so without risdiction, to the obvious detriment of the party found guilty and sent to prison.

In cases in which the fraud of the Sixteenth Amendment has been exposed to the ew of the court, federal judges have hidden behind a variety of limp excuses for fail-g to act upon the revelation of that fraud. None has denied the fraud, choosing, ther, to do nothing about it and preferring to continue to enforce nonexistent come tax statutes. Each of them must be hoping that his actions are upheld in the nited States Supreme Court. They may very well be; the Supreme Court Justices are culpable as any lower court judge in this matter and thieves have a tendency to stick gether, there being something about squealers that is proscribed within any such ique. But the legal truth of the matter is that unconstitutional statutes remove any-ne's justification for enforcing such statutes. In *Larson v. Domestic and Foreign Com-rce Corp.*, 337 U.S. 682, 689 (1949), the Court stated:

> A [type of case in which an official may be held personally liable for damages] is that in which the statute or order conferring power upon the officer to take action in the sovereign's name is claimed to be unconstitutional . . . the conduct against which specific relief is sought is beyond the officer's powers and is, therefore, not the conduct of the sovereign . . . [I]n this case the power has been conferred in form but the grant is lacking in substance because of its constitutional invalidity.

And, as has been pointed out already, the unconstitutionality of any statute dates ot from the time of the discovery of its unconstitutionality, but from the time of its ception. The grant of authority to enforce, thus, never existed because it never had nstitutional validity.

In cases in which the fraud of the Sixteenth Amendment has been exposed to the ew of the court, federal judges have brushed aside the fraud on the theory that a stat-e stands until overturned. They have consistently neglected to state the obvious—atutes which don't exist do not need to be overturned. Furthermore, this position veals a fundamental immorality. They would rather continue to enforce a fraud an risk the wrath of the I.R.S. Any one of them could "overturn" the income tax atutes based upon the evidence, but they have chosen the low road of cowardice stead. What excuse will they have when the American people discover their abject ck of integrity, that they chose to enforce invalid, unconstitutional income tax atutes.

> Woe unto them that decree unrighteous decrees, and that write grievousness which they have prescribed.
> To turn aside the needy from judgment, and to take away the right from

> And what will ye do in the day of visitation, and in the desolation which shall come from far? to whom will ye flee for help? and where will ye leave your glory?
>
> Without me they shall bow down under the prisoners, and they shall fall under the slain. For all this his anger is not turned away, but his hand is stretched out still. Isaiah 10:1-4

Perhaps these judges will attempt to justify their actions based upon the dishonest and misleading excuse that they act on behalf of the common good when they permit and cooperate in the abusive enforcement of the federal income tax statutes in this country. President Reagan's statement on May 30th, 1985 that "[o]ur federal tax system is, in short, utterly unjust, and completely counterproductive," and that it has "earned a rebellion, and it's time we rebelled," put the lie to that ridiculous position. Even if that were not the situation, the judges have, by claiming some kind of noble common good motive, dug themselves an unconstitutional grave.

The primary duty of the judicial system is to protect the rights of the individual citizen. The courts, in matters of taxation, have historically followed the lead of the judiciary under Hitler, preferring to destroy the constitutional rights of individuals by claiming that some sort of "common good" was involved. In *United States v. Lee*, 455 U.S. 252, 259 (1982), religious freedom was dealt a crippling blow by the torquemada of the "common good" in matters of taxation. In a dissent in *Brown v. Walker*, 161 U.S. 591, 635 (1895), Justice Field issued a warning against such a rationale:

> The abuses and perversions of sound principles which would creep into the law by yielding to arguments like these-**to what is supposed to be necessary for the public good** . . . (emphasis added)

The Bill of Rights was written to protect the rights of individuals against such abuses and perversions on the behalf of a majority, whether a perceived majority or a real one.

The courts have, in the past, recognized that the power to tax was a dangerous weapon which could be used to destroy, a principle recently reiterated by President Reagan. It is simply not possible that the intent of Congress, in suggesting the Sixteenth Amendment, was to destroy innocent citizens of this nation. And it was not. Neither was it their intent to tax the middle class. As it is amply illustrated in the public record, it was the intent of the Sixteenth Amendment to get at "the immensely wealthy individual" (see *The Law That Never Was*, Vol. I, at 147) with large holdings and "many times as great wealth" as the citizen of moderate means (see *The Law That Never Was*, Vol. I, at 273) who had capital gains (see *The Law That Never Was*, Vol. I, at 227), and to lay income taxes in pursuance of that amendment only "to meet national emergencies" (see *The Law That Never Was*, Vol. I, at 51 & 291). In his speech at Williamsburg on May 30, 1985, President Reagan emphasized that the federal income tax was intended to be a tax on the wealthy and that only those reporting income of more than $500,000 had to pay the tax, which began at 2%. As the judiciary well knows, that intent has been overrun by the manner in which the income tax system has been administered and subsequently altered by the current statutes.

To fulfill their duty to protect the rights of individual citizens, the courts must rule in favor of the individual against the United States when it is warranted. In *Kennecott*

ing, quoted Abraham Lincoln, who stated:

> It is as much the duty of Government to render prompt justice against itself in favor of citizens as it is to administer the same between private individuals.

In fact, the courts must have a bias in favor of the citizen because the Constitution was written and intended to protect the rights of individuals against intrusion by the state. As did the judiciary in the Third Reich, the judiciary in this country has taken the opposite side and now protects the state against individuals who assert their Constitutional rights, especially in matters concerning income taxation.

Every citizen who is not in some special position of favor in this country has been individually harmed in the violation of their rights by Internal Revenue Service agents prying into their affairs and stealing their hard earned money. These agents now have been warned of the fraud in the ratification of the Sixteenth Amendment and yet they still continue to destroy the rights of individuals anyway. They now have complete and total knowledge of what they were doing. They cannot interpose the excuse of mistake of fact or of law. They cannot now plead good faith. But, their reaction to the revelation of a fundamental fraud in the statutes which they unlawfully enforce is not surprising.

Represented by the Justice Department and the Internal Revenue Service, our federal civil servants have made a practice of destroying the middle class and have become hardened and ruthless in so doing. This is exactly the opposite of their practice in letting the powerful and well-heeled in this nation get away with virtually anything. The recent case of E. F. Hutton's massive check-kiting scheme, approved by well-connected Hutton executives, is but one example among many. The violations of federal statutes by the major oil companies with aid of the benign neglect of the Justice Department and the Internal Revenue Service are legion; see Robert Sherrill, *The Oil Follies of 1970-1980* (New York, 1983).

The ignoble and dishonest federal judges in this country have gone to great lengths to preserve an outrageously perverted Internal Revenue Service, predicated on the assertion that if the majority of the American people benefit from the destruction of the Constitutionally-protected rights of a minority, that such destruction can and must be somehow justified. The explicit totalitarian and tyrannical ramifications of that assertion need no argument whatsoever. It is not the majority of the American public, however, who has benefitted from the criminal conspiracy to defraud them. Such a contention is an absolute nonsequitur; the people cannot benefit from crimes committed against the individuals in their midst because all the people at once become exposed to the same risk. Those who have benefited in great measure from the continued existence of the federal income tax system are the federal judges, the prosecutors and the Internal Revenue Service employees. These three groups of cohorts receive their salaries from that system and the latter group receives sizeable bonuses based upon how much blood money they can squeeze from the taxpaying turnips. It is unnecessary that a conspirator in a conspiracy to commit fraud actually benefits from the fraud. A party that does directly benefit from the fraud is that much more guilty. Obviously, those who do benefit from a fraud aren't likely to want those benefits to be threatened or to disappear.

"The king can do no wrong," a phrase which is almost universally abused. Since this country has never officially had a king, we must, of course, look to a country that has had a monarchy as the source of this phrase. The commonly accepted source country for the phrase has been Great Britain, the motherland for the founders of this nation. Great Britain is also the commonly accepted source country for our legal system.

As Britain grew in stature, ultimately becoming great, the kings of that nation began to exhibit the malady of royalty—bloated egos. "The king can do no wrong" became a club in the hands of these kings. During the 17th century, Samuel Rutherford, born in 1600, the hard-nosed professor of divinity at the University of St. Andrews in Scotland, proclaimed his staunch and unwavering position against any king who would presume that by oft-repeating those six words, royal wrongdoing would somehow become right. Rutherford rejected the notion that kings possessed any divine rights exempting their acts from punishment. Rutherford considered his God the only King who could claim such authority. Rutherford was charged with heresy and treason and, in 1651, his book, *Lex Rex*, was ordered burned in public. He was thereafter imprisoned in his own house until his death in 1661.

Rutherford's protests against the excesses of the crown were in large measure due to the excesses of the Star Chamber, and the other so-called "prerogative courts." These courts of injustice flourished during the 16th and early 17th centuries under the Tudor and Stuart kings who put their stamp upon the history of Great Britain and upon the unfortunate victims who entered their infamous Star Chamber and the Privy Council of the crown. The Star Chamber was so called because its arrogant judges had a vision of the starry heavens painted over their bench in the unholy, impudent belief that they were like gods in judgment. These judges "would ordinarily laugh when the word liberty of the subject was named"; see Sir Charles Harding Firth, *Oliver Cromwell and the Rule of the Puritans in England* (Oxford University Press, London, 1961), at 22. Juries that gave verdicts against the crown were fined; *ibid.* The result of the high-minded shenanigans of King Charles' judges was several public lynchings in 1641 at the hands of an angry nation stirred to action through the Grand Remonstrance by Oliver Cromwell and the Long Parliament. The Grand Remonstrance was a ponderous list of grievances against the Crown. Those grievances were alleviated somewhat by the overthrow of the King's courts and by Charles' slightly more liberal attitude after some of his lieutenants were beheaded, impeached and imprisoned or chased to other lands. Nevertheless, Cromwell did not let the people forget and ultimately Charles lost his head; Firth, at 225.

At several stops along the road to the British Empire, British royalty was corrupted by the immense power that they possessed. Nothing was so representative of that corruption as the corruption of "The king can do no wrong." The meaning of "The king can do no wrong" is not that it is impossible for the king to do wrong, but, rather, that the king is not permitted to do anything wrong. The source for that most fundamental of doctrines is not Great Britain, but the source of Great Britain's governmental system—ancient Israel.

When the children of Israel came out of their slavery in Egypt, they were given a set of laws, the Ten Commandments (deposited in the holy repository of the Law, the Ark of the Covenant—Exodus 25:16) and the Mosaic Constitution under those Command-

tered. The people were to obey the priests because they were the administrators of God's Law and, in judgment, stood in place of God. But these judge-priests were delegated only limited powers. They were to administer that Law without fail and without the slightest deviation from it.

> Ye shall not add unto the word which I command you, neither shall ye diminish ought from it, that ye may keep the commandments of the Lord your God which I command you. Deuteronomy 4:2

Anytime there was a question about the administration of the Law, because a particular situation did not seem to be directly provided for in the Law, God was to be consulted through the Ark of the Covenant. This is the basis for equity jurisdiction, or discretion. Equity jurisdiction is not founded upon the discretion of an earthly judge at all, but upon the discretion of God Himself and no other. All such direct, equitable, discretionary commands of God were given through the Ark.

> And [at the mercy seat above the Ark] I will meet with thee, and I will commune with thee from above the mercy seat, from between the two cherubims which are upon the ark of the testimony, of all things which I will give thee in commandment unto the children of Israel. Exodus 25:22

In other words, because it was the responsibility of the priests to stand in place of God in the matters of His Law, they could do no wrong, i.e., they were not permitted to do wrong, because God, of course, would not administer His own Law wrongfully. Under a perfect Law, giving a perfect command demanded a perfect administration of that command under the Law. Failure of the priesthood to obey the standing orders to make no deviation from any Law or command, resulted in the defilement of the whole nation.

> The earth also is defiled under the inhabitants thereof; because they have transgressed the laws, changed the ordinance, broken the everlasting covenant. Isaiah 24:5

The punishment for any priestly deviation from the Law or any command was appropriately severe. When two sons of the high priest, Aaron, decided to test the proscription against priestly deviation from the Law, "there went out fire from God, and devoured them, and they died before God." Leviticus 10:1, 2

That kind of grim display of disciplinary action was a definite limiting factor in any temptation to free-wheel in the administration of the priestly office. Such harsh treatment for the imperfect priest extended even to Aaron, brother of Moses and the high priest, and to Moses, the first judge of Israel and spiritual leader. The responsibility for all the wrongful acts of the priesthood was put "upon Aaron's forehead." Exodus 28:38

When the Israelites were in the wilderness without water, Moses was commanded to assemble the people, along with Aaron, around a particular rock, which Moses was then to strike once with his rod; Numbers 20:7, 8. Moses struck the rock twice; Numbers 20:11. For this deviation, Moses and Aaron were forbidden to lead the Israelites into the promised land, Moses because he disobeyed, Aaron because he was the high priest and, therefore, ultimately responsible; Numbers 20:12. Aaron was executed

put them on Eleazar. Aaron was then executed by God Himself and Moses and Eleazar, the new high priest, came down; Numbers 20:23-28.

Moses was not executed immediately because he was operating under a prior agreement with God made at the burning bush. God, said to Moses, I AM THAT I AM, at the bush (Exodus 3:14), and told Moses that he was going to bring the children of Israel "unto a land flowing with milk and honey"; Exodus 3:17 As soon as the Israelites were led to the promised land, he, also, was executed by God Himself; Deuteronomy 4:22; 32:48-52.

> And the Lord said unto him, This is the land which I sware unto Abraham, unto Isaac, and unto Jacob, saying, I will give it unto thy seed: I have caused thee to see it with thine eyes, but thou shalt not go over thither.
> So Moses the servant of the Lord died there in the land of Moab, according to the word of the Lord. Deuteronomy 34:4, 5

The principle of resisting the temptation to stray off of the path given to any judge by the Law was acknowledged by Chief Justice Marshall in *Osborn v. Bank of United States*, 9 Wheat 738, 866 (1824):

> Judicial power, as contradistinguished from the power of the laws, has no existence. Courts are mere instruments of the law, and can will nothing . . . Judicial power is never exercised for the purpose of giving effect to the will of the judge; always for the purpose of giving effect . . . to the will of the law.

Despite the awful prospect of rousing God's wrath, the priests of Israel became less and less devout to the Law, reflecting the flagging devotion of the people themselves and, so, a debilitating series of national enslavements to surrounding kingdoms ensued. Interspersed with each period of slavery were periods of peace and prosperity which were brought about by national repentance and return to God's Law under the faithful rule of judge-priests raised up to free the nation of Israel from its pagan neighbors. That on-again-off-again era of the theocracy finally came to an end with the disgraceful behavior of Samson. Shortly thereafter, a destructive civil war was fought and the theocracy fell into the hands of evil men who judged for pleasure and profit. The people of Israel became so disenchanted with the priesthood that, even after the advent of what was to be the last judge-priest, faithful Samuel, the elders, who were the Senate of Israel, clamored for a switch to a monarchy.

> Then all the elders of Israel gathered themselves together, and came to Samuel . . .
> And said unto him, Behold, thou art old, and thy sons walk not in thy ways: now make us a king to judge us like all the nations . . . I Samuel 8:4, 5

Samuel, with a bit of concern for his own image, counseled against such a switch, but God told Samuel to let the people have their way, saying "they have not rejected thee, but they have rejected me, that I should not reign over them"; see I Samuel 8:4-5, 7.

So, in the very first Biblically recorded instance of republican action, the nation of Israel put itself under an earthly king. The elders realized, belatedly, that they had committed a griveous error in asking for an earthly king to replace the one and only true King, the heavenly King.

us a king. I Samuel 12:19

God would no longer be looking to directly intervene in the behavior of the judge-priests. Israel now had an earthly king who would have to see to that. Samuel, speaking prophetically for God, promised the nation that their earthly kings wouldn't exactly be looking out for the people's interests as God had done.

> This will be the manner of the king that shall reign over you: He will take your sons, and appoint them for himself, for his chariots, and to be his horsemen; and some shall run before his chariots.
>
> And he will appoint him captains over thousands, and captains over fifties; and will set them to ear his ground, and to reap his harvest, and to make his instruments of war, and instruments of his chariots.
>
> And he will take your daughters to be confectionaries, and to be cooks, and to be bakers.
>
> And he will take your fields, and your vineyards, and your oliveyards, even the best of them, and give them to his servants.
>
> And he will take the tenth of your seed, and of your vineyards, and give to his officers, and to his servants.
>
> And he will take your menservants, and your maidservants, and your goodliest young men, and your asses, and put them to his work.
>
> He will take the tenth of your sheep: and ye shall be his servants.
>
> And ye shall cry out in that day because of your king which ye shall have chosen you; and the Lord will not hear you in that day. I Samuel 8:11-18

The people could have turned back from their choice at any time, but stubborness was the order of the day. So, the search for a king which resulted in the choice of Saul was consummated in his anointing by Samuel; see I Samuel 10:1.

This new arrangement of an earthly king, supported by the existing high-priest, judge-priests, elders and lesser spokesmen was followed until Israel was broken up into two kingdoms, Israel and Judah, and, ultimately, both kingdoms went into captivity in Assyria and Babylon, respectively. This arrangement was also followed several thousands of years later by the British, with their king, prime minister, judges, House of Lords and House of Commons.

The Israelite monarchy was originally given the same strict behavior requirements as the members of the theocracy. Saul, as king, was not permitted to do anything wrong. When he did disobey God's commandment given through Samuel, who was responsible for overseeing the infant monarchy through its initial growing pains, Saul's ordination to govern was removed and given to David; see I Samuel 16:13, 14. Saul, as king, could do no wrong, that is, once again, was not permitted to do any wrong, and was stripped of his spiritual authority to rule. This is the true and unequivocal meaning of the phrase "The king can do no wrong."

David, Saul's successor, had twice shown mercy to Saul when he could, and probably should, have killed Saul in order to rightfully ascend to the throne. For that reason, God overlooked David's two great sins. But David's mercy covenant with God was frittered away by his son, Solomon, because Solomon couldn't keep away from the forbidden heathen women. After Solomon failed to maintain the kingly posture, the doctrine of "The king can do no wrong," came back in full force. The awful difference for the nation of Israel was that there would never again be a judge-priest of the stat-

age under which God, through Samuel, had promised that their own kings would put them. These kings would never be permitted to do wrong, but from that point forward there would be no one to forcefully remove them from the throne whenever they would arrogantly proclaim in defiance of God Himself that "The king can do no wrong." The people of Israel had voted for their own destruction.

Thus, the concept of the divine right of kings to commit any and all offenses is a ludicrous and cruel fiction based upon a a very old lie. Samuel Rutherford realized that the acceptance of the divine right of kings as *carte blanche* for the wrongdoing of those in ruling positions was fostered by the tyrants themselves, both the kings and their cohorts, the Star Chamber judges. Nevertheless, "The king can do no wrong," in its perverted form, was imported from England and invited into our judicial system, being called "sovereign immunity," with varying degrees of protection ranging from absolute to qualified. The latter category generally means that the "sovereign" will subject itself to suit only if it consents to such a suit. Logically, that will not happen very frequently.

At one point in its history, the U.S. Supreme Court recognized the correct meaning of "The king can do no wrong"; in *Langford v. United States*, 101 U.S. 341, 343 (1879), the Court held:

> We have no king to whom it can be applied . . .
>
> It is to be observed that the English maxim does not declare that the government, or those who administer can do no wrong; for it is part of the principle itself that wrong may be done by the governing power, for which the ministry, for the time being, is held responsible; and the ministers personally, like our President, may be impeached; or, if the wrong amounts to a crime, they may be indicted and tried at law for the offence.
>
> We do not understand that either in reference to the government of the United States, or of the several States, or of any of their officers, the English maxim has an existence in this country.

This statement had a foundation in English law from which flowed the system of law which developed in this country. In *Chisholm v. Georgia*, 2 Dall. 418 (1793), the early (and infinitely more honest) United States Supreme Court noted that, at 436:

> "[U]ntil the time of [King] Edward I. the King might have been sued in all actions as a **common person**." (quoting Com. Dig. 105, emphasis added)

In the same vein, the *Chisholm* Court noted, at 460, that:

> [U]nder [the Saxon] government it was ordained, that the king's court should be open to all plaintiffs, by which, without delay, they should have remedial writs as well against the king, or against the queen, as against any other of the people . . . Until the time of Edward I. the king might have been sued as a **common person**. The form of process was even imperative . . . Bracton, who wrote in the time of Henry III, uses these very remarkable expressions concerning the king; *"in justitia recipienda, minimo de regno suo comparetur"*—"in receiving justice, he should be placed on a level with the **meanest person in the kingdom**." True it is, that now in England the king must be sued in his courts by petition; but even now, the difference is only in the form, not in the thing. The judgments or decrees of those courts will substantially be the same upon a precatory as upon a mandatory process. In

ject from contending with him *freely* . . .

"Judges ought to know, that the poorest peasant is a man as well as the king himself; all men ought to obtain justice; since in the estimation of justice, all men are equal; whether the prince complain of a peasant, or a peasant complaint [sic] of the prince." These are the words of a king, of the late Frederic of Prussia. In his courts of justice, that great man stood upon his native greatness; and disdained to mount upon the artificial stilts of sovereignty. (emphasis added)

These common law actions against the crown were and are well known by the judiciary in this country; see *Glidden Company v. Zdanok et al.*, 370 U.S. 530, 563 (1961), where the Court stated:

> At least one touchstone of justiciability to which this Court has frequently had reference is whether the action sought to be maintained is of a sort "recognized at the time of the Constitution to be traditionally within the power of courts in the English and American judicial system." *United Steelworkers v. United States*, 361 U.S. 39, 44, 60 (Frankfurter, J., concurring). There can be little doubt that that test is met here. Suits against the English sovereign by petition of liberate, *monstrans de droit*, and other forms of action designed to gain redress against unlawful action of the Crown had been developed over several centuries and were well-established before the Revolution . . . This history was known by Congress . . . and undoubtedly was familiar to the Framers of the Constitution, most of them lawyers.

The manner in which the correct interpretation of the maxim is supposed to be applied was explained, as follows, in *Virginia Coupon Cases*, 114 U.S. 270, 288 (1884):

> A defendant sued as a wrong-doer, who seeks to substitute the State in his place, or to justify by the authority of the State, or to defend on the ground that the State has adopted his act and exonerated him, cannot rest on the bare assertion of his defence. He is bound to establish it . . . [The act of January 26, 1882] is a **legislative act** of the government of Virginia, but it is not a law of the State of Virginia. The State has passed no such law, for it cannot; and what it cannot do, it certainly, in contemplation of law, **has not done** . . . He stands, then, stripped of his official character; and, confessing a personal violation of the plaintiff's rights for which he must personally answer, he is without defence. (emphasis added)

Clearly, American judges have, in the past, understood that sovereign immunity was a fiction designed only to protect the indefensible wrongdoing of those who claim special privilege under a supposed governmental fiat to rule.

As shown by the Biblical history and the U.S. Supreme Court cases cited, those who are in authority have the responsibility to act in place of God; and, when a statute which violates the fundamental and righteous organic law of the nation is passed, that statute must be said not to exist and those who have enforced a nonexistent statute must be said to have acted without authority since God's representative, acting in His place, is not permitted to commit any wrongdoing. Knox's Solicitor, Reuben S. Clark, took this righteous principle and perverted it. Clark said that since the State Legislatures could not do what they had apparently done, that is, change anything in the proposed wording of the Congressional resolution submitting the proposed Sixteenth Amendment to the States, they must have done it in error. However, the proper appli-

the proposed Sixteenth Amendment null and void, i.e., since the State Legislatures could not do what they had apparently done, they didn't do it at all.

During this century, in keeping with the irresistible urge for those in power to corrupt themselves by giving themselves an out for their evil deeds, a multitude of sorry excuses for justifying the existence of the theory of sovereign immunity have been advanced by the judges of this country. More recently, the trend has seemingly reversed itself somewhat. It has been said that "the principle of sovereign immunity is an archaic hangover not consonant with modern morality," which conflicts with "the moral responsibility of the State"; see *Larson v. Domestic and Foreign Commerce Corp.*, 337 U.S. 682, 703 & 723, n. 13 (Frankfurter, J., dissenting) (1949). Sovereign immunity is "a doctrine without moral validity," and which "does not have the support of any principle of justice"; *Kennecott Copper Corp. v. State Tax Comm'n*, 327 U.S. 573, 580 & 582 (1946) (Frankfurter, J., dissenting [4 to 3]). These are unchanging principles from antiquity which have not lost their validity. What has changed is the citizenry's resolve to enforce the principle that no man, no matter how high his position, is immune from having his sins discovered and then receiving punishment for those sins. In the Biblical perspective, as previously shown, the requirements are far more severe—the higher the position the greater the need for punishment.

> For unto whomsoever much is given, of him shall much be required: and to whom men have committed much, of him they will ask the more. Luke 12:48

Despite the bare bones of judicial criticism against sovereign immunity, which have lately been dangled in front of the peons, anyone who would dare to challenge the authority of a judiciary gone mad with power is going to find that a high brick wall has been placed in front of the jurists' cupboard. For their own benefit, judges have clung steadfastly to the remaining substantial portions of the modern concept of immunity. This has been admitted by the U.S. Supreme Court to be a corrupt concept. In *Keifer & Keifer v. R. F. C.*, 306 U.S. 381, 388 (1939), the Court stated:

> The starting point of inquiry is the immunity from unconsented suit of the government itself. As to the states, legal **irresponsibility** was written into the Eleventh Amendment; as to the United States, it **is derived by implication.** *Monaco v. Mississippi*, 292 U.S. 313, 321. (emphasis added)

As to other officers of the United States other than the judiciary, some chips have been whittled off the "hard-heart" of sovereign immunity. Virtually all members of the executive branch have become subject to suit under a qualified immunity, which exposes them to risk if they cannot reasonably claim good faith in their actions. All administrative personnel have only this qualified immunity. The immunity which the judges accord to themselves, not surprisingly, is pristinely intact.

When the king's ability to do anything wrong is placed beyond the realm of possibility, beyond the reach of any remedy in law, those who are in authority are placed above the law; see *Briscoe v. Lahue*, 460 U.S. 325 (1983) (Marshall, J., dissenting). That is the classic, and only, route to tyranny. In *Nixon v. Fitzgerald*, 457 U.S. 731, 768 (1982) (White, J., dissenting; quoting Chief Justice Marshall), it was stated:

> The Government of the United States has been emphatically termed a

right.

However, it was the intent of the Civil Rights Act of 1866 to subject "the judicial department of the governments of the States" to suit for damages. Moreover, a member of the House Judiciary Committee, Representative Lawrence, in the Congressional debates over the Civil Rights Act of 1866, declared that "it is better to invade the judicial power of the State than permit it to invade, strike down, and destroy the civil rights of citizens. A judicial power perverted to such uses should be speedily invaded. The grievance would be insignificant." It is evident from Operation Greylord and other similar undercover activities undertaken by the various U.S. Attorney's offices throughout the country that the federal judiciary has no problem "speedily invad-[ing]" State judiciaries for their perversions of judicial power. Yet, while the federal courts have frequently held that the Civil Rights Act of 1866 applies with equal force, in broad and sweeping terms (*Griffin v. Breckinridge*, 403 U.S. at 97 & *United States v. Price*, 383 U.S. 787), to all federal officials, the federal judges have exempted themselves from that liability, except for wrongful taking of jurisdiction; see *Imbler v. Pachtman*, 424 U.S. 433 (1976).

Even in the matter of wrongful taking of jurisdiction, as *Stump v. Sparkman*, *supra*, has shown, the judges are wholly unwilling to be held accountable for their behavior. Yet, the remedy for the commission of the one judicial indiscretion is supposed to be no different than that for any other injury—a suit for damages. This avenue to recovery is supposed to be a fundamental tenet of freedom; see *Marbury v. Madison*, 1 Cranch 137, 163 (1803), which stated:

> The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury.

And, it is supposed to be the courts in which an injured party may find justice. *Warth v. Seldin*, 422 U.S. 490, 519 (1975) (Douglas, J., dissenting), stated:

> The American dream teaches that if one reaches high enough and persists there is a forum where justice is dispensed . . . let the Courts serve that ancient need.

It is, however, not just a prerogative of the courts to dispense justice, it is a Scriptural necessity that they do so.

> "Now then let the fear of the Lord be upon you; be very careful what you do, for the Lord our God will have no part in unrighteousness, or partiality, or the taking of a bribe."
>
> Then [King Jehoshaphat] charged [the judges] saying, "Thus you shall do in the fear of the Lord, faithfully and wholeheartedly." II Chronicles 19:7, 9 (NASV)

Furthermore, the American dream does not teach that one must persist, to the point of financial ruin, to reach "high enough" to obtain justice. It is supposed to be the duty of the courts to make it accessible, even when it is to the potential ruin of federal wrongdoers in the courts. In *Kennecott Copper Corp. v. State Tax Comm'n*, 327 U.S. 573, 580 (1946), Justice Frankfurter, dissenting [4 to 3]), quoted Abraham Lincoln, in stating that:

viduals.

And, in *United States v. Lee*, *supra*, at 220, it was stated:

> Courts of justice are established, not only to decide upon controverted rights of the citizens as against each other, but also upon rights in controversy between them and their government.

Further, in *Virginia Coupon Cases*, *supra*, at 291, the Court said:

> [H]ow else can these principles of individual liberty and right be maintained, if, when violated, the judicial tribunals are forbidden to visit penalties upon individual offenders, who are the instruments of wrong, whenever they interpose the shield of the State? The doctrine is not to be tolerated. The whole frame and scheme of the political institutions of this country, State and Federal, protest against it. Their continued existence is not compatible with it. It is the doctrine of absolutism, pure, simple, and naked; and of communism, which is its twin; the double progeny of the same evil birth.

What is **supposed** to happen in our courts and what actually happens can be, and usually is, two completely different things. The courts have, from time to time, permitted recovery against federal and State officials despite the corrupting shield of sovereign immunity. But, recovering against federal judges who regularly violate every principle of decency and morality in federal tax cases is quite another story.

Even when a wrongful taking of jurisdiction is evident, there is an immense amount of juristic opposition to entitling an ordinary little citizen to dip into a brother judge's wallet, even when that brother judge is grievously in the wrong; see *Stump*, *supra*. Thus, extracting justice from a court in which one is attempting to make a claim for damages against a judge is a long, tedious, expensive proposition without much hope for success. That's if you could argue the case yourself; finding an honest attorney who had the courage to take the case would be another arduous task altogether. The courts have said that those who are responsible for injury should be made to pay for the damage that they have done, even those who are working as government officials. In *Owen v. City of Independence*, 445 U.S. 622, 657 (1980), the Court expressed an intent to honor a guarantee of access to relief from injury:

> The innocent individual who is harmed by an abuse of governmental authority is assured that he will be compensated for his injury.

Goltra v. Weeks, 271 U.S. 536, 545 (1926), carries a disclaimer against sovereign immunity:

> The exemption of the United States from suit does not protect its officers from personal liability to persons whose rights of property they have wrongfully invaded.

Apparently, consideration for their own personal liability never enters into such decisions, since the judges have provided themselves with the one very large escape hatch of sovereign immunity through which they always duck out from responsibility for their wrongdoing.

As to other means of righting the wrongdoing of federal judges, there is the provi-

occasional slaps on the wrist administered by judicial councils, but these are mere cosmetics and infrequently applied in any event. A recent case involved federal District Judge Allen Sharp whose wife leaked information from the U.S. Attorney's office to a federal convict paroled from a prison term served for drug charges. Her purpose was apparently to warn the felon of further action by the prosecutor. Mr. Sharp dutifully tried to cover up his spouse's illegal activities, but she was convicted on charges of conspiracy to aid and abet anyway. Mr. Sharp's awful punishment for his part in covering up the crime was an unusually hard slap on the wrist delivered by the Chief Judge of the Seventh Circuit Court of Appeals, Walter Cummings. Seems like there was a pretty big commotion about a guy named Nixon covering up criminal activity, but then he was never prosecuted either. Obviously, the result for both Sharp and Nixon lacked the harshness of the usual result when an ordinary citizen is judged by a court.

The inroads on sovereign immunity allowed by the federal judiciary have mostly subjected only lower level officials to punishment for their wrongful acts. The federal judges, who are most responsible for permitting the onslaught against our rights by tyrants, vigorously protect themselves, from punishment for our injuries. This can only lead to the conclusion that the judges themselves have become tyrannical. The recent spectacular Operation Greylord trials only highlight a battle for power between federal and State judges which has been going on ever since the Fourteenth Amendment was purportedly ratified. That Amendment has had the effect of making the federal judiciary much more powerful than the various State judiciaries. That, of course, was never the intent of the framers of the Constitution who wanted a balance of power between the people, the States and the federal administration. Were the State courts not shackled by Fourteenth Amendment considerations, it would, in great measure, be their responsibility to protect the people against the tyrannical practices of the federal judiciary.

The battle of the judges points up the fact that, amongst public servants, it is the judges who ultimately can most effectively either prevent or hasten the collapse of a nation. They are in the best position to stand as the protector of the Law, or to operate to pervert it. The people do have the power to control their own destiny. It is true that the jury, both petit and grand, should be utilized to stop every attempt by a runaway judicial system, both judges and prosecutors, to overrun and override the Law. Nevertheless, in this The battle of the judges points up the fact that, amongst public servants, it is the judges who ultimately can most effectively either prevent or hasten the collapse of a nation. They are in the best position to stand as the protector of the Law, or to operate to pervert it. The people do have the power to control their own destiny. It is true that the jury, both petit and grand, should be utilized to stop every attempt by a runaway judicial system, both judges and prosecutors, to overrun and override the Law. Nevertheless, in this country, amongst all those who were supposedly to serve the people, between the three branches of the administration of government, the judges were meant to be the last line of defense against tyrannical practices.

> For though the wisest and best laws were enacted to fix the bounds of power and liberty, yet, without a due care in constituting persons impartially to execute them, the former by its influence and encroachments on liberty would soon become tyranny . . .

rights of the citizens against the tyrannical practices of the Internal Revenue Service and of the U.S. Attorneys that we, the people, must rightfully feel that the judges are judges no longer. Just as in ancient Israel, when the judge-priests perverted the Law ever so slightly and when the kings disobeyed in even the slightest part of a command from God, such men could no longer be considered the servants of that true Sovereign, so, in modern-day America, we, the people, the true sovereign in this land, reject such servants who deviate from the Constitution.

> All power of government is derived from God through the instrumentality of kings or the people . . . [but a] good king is a miracle.

On the Depravity of Kings and the Sovereignty of the People, American Archives, I, 976-77.

The United States was founded as a Christian nation and the United States Supreme Court has admitted as much. In *Holy Trinity Church v. United States*, 143 U.S. 457, 471 (1892) (citing, with approval, "Chancellor Kent, the great commentator on American law, speaking as Chief Justice of the Supreme Court of New York"), the Court held:

> [W]e are a Christian people, and the morality of the country is deeply ingrafted upon Christianity, and not upon the doctrines or worship of [impostors].

The founders of this country wrote the Constitution in recognition of this heritage. The substance of the Constitution was, in fact, a blend of the various church constitutions of the Christian congregations of the colonies; see David Hutchison, *Foundations of the Constitution*, (University Books, Secaucus, New Jersey, 1975), at 3-5, where he noted:

> In founding a church, the people covenanted or agreed to live in obedience to the laws and government of God, and to hold together as one ecclesiastical body. In 1602 the people of Gainsborough, from which came the Mayflower company, entered into a covenant. In England, the covenants were used for political purposes by the associations or compacts formed for the purpose of supporting Parliament in its struggle against the crown. They were then carried across the Atlantic to America, and used for both political and ecclesiastical purposes. The Mayflower compact was simply the application of the church covenant to political uses. The political and ecclesiastical doctrine of the early New England leaders was that both church and state were organized by means of covenants. In 1639, the clergy declared, "Every state is united by some covenant among themselves." Governor Winthrop said that governmental power "must be limited by constitutions, or political covenants similar to those existing between God and man . . ." Thomas Hooker applied, or helped to apply, these very principles of the church covenant to the civil government of Connecticut in 1639 . . . The Fundamental Orders of Connecticut is a written constitution modelled after the church covenant. The Fundamental Agreement of the New Haven Colony was also a church covenant in form. The Guilford Colony adopted such a covenant while still at sea, 1639. The Scotch Covenants also appear on this side of the Atlantic among people of Scotch or Scotch-Irish birth or descent, in the Carolinas and Pennsylvania. The Watauga Compact drawn up by James Robertson, 1774, a Scotch-Irish Presbyterian of Virginian birth, was such a covenant, and the first written constitution adopted west of

As Christians, we have the greatest possible constitutional covenant in which the ancient and everlasting Law has been written on our hearts and dwells within us.

> Know ye not that ye are the temple of God, and that the Spirit of God dwelleth in you?
>
> If any man defile the temple of God, him shall God destroy; for the temple of God is holy, which temple ye are. I Corinthians 3:16, 17
>
> I will put my laws into their hearts, and in their minds will I write them. Hebrews 10:16

The indwelling of the Holy Spirit is the evidence that the Law is in us. Christians are, thus, the new Ark of the new Covenant. And it was with the intent that we have, as Christians, the capability to govern ourselves under God, that the founding fathers of this nation, the writers of the Constitution, left the privileges of the sovereign solely to the people; see *Chisholm*, *supra*, at 462, which states:

> [M]an himself, free and honest, is, I speak as to this world, the noblest work of God.
>
> Concerning the prerogative of kings, and concerning the sovereignty of states, much has been said and written; but little has been said and written concerning a subject much more dignified and important, **the majesty of the people.** (emphasis added)

In that all power in the Constitution is derived from "we," the sovereign people, it may be taken back by "we," the same sovereign. Only limited, delegated powers were granted by the majesties of this country to those who would serve in the various capacities of President, Congressman and federal judges. The founding fathers did decide against having a king because a monarchy could not remain just and fair pursuant to Samuel's prophecy and to the colonists' most recent experience in fulfillment of that prophecy, King George. The ancient Israelites, in voting to switch to a monarchy, lost the only effective means at their disposal to enjoy the faithful administration of government—the right to the intervention, upon His duty to the people, of a righteous heavenly King. The colonists, reversing the choice of the ancient Israelites, chose to have only a heavenly King and to reserve to the sovereign, Christian people of this nation the ability and the right to righteously intervene and undo the delegation of power to any servant who chose to deal wrongfully with the laws of the sovereign.

> James Madison, who played a major role in the drafting of the Constitution, said that those "who overleap the great barrier which defends the rights of the people . . . are tyrants."

John W. Whitehead, *The Second American Revolution* (David C. Cook Publishing Co., Elgin, Illinois, 1982), at 71.

The judiciary of this nation has not sought to "overleap the great barrier," they've lowered it to ground level so that tyrannical servants, like the I.R.S. and U.S. Attorneys, can violate our rights in a walk-over. They have, also, raised a great barrier by cutting the people off from their capability to intervene in the processes by which the servants serve. Their methods have been extraordinarily successful. But the arrogant behavior of the judges in this land now has been recognized and, therefore, must be ended. They have attempted to usurp the power of "we," the people, and have used the income tax to great effect as part of that attempt. We must reclaim our power over

But [the servant] that doeth wrong shall receive for the wrong which he hath done; and there is no respect of persons. Colossians 3:25

It has been common, in trials of so-called income tax offenders, for federal prosecutors to follow a line of reasoning which imputes to the defendant a "known, legal duty" to file an income tax return on the basis of previously filed returns. Under this restrictive thinking, there is no room for repentance.

The word "repentance" is more than a mere word. Repentance is a concept. With repentance there must, of course, be regret over what one has done in the past. But, co-existent with the regret, there must be a change of mind, not necessarily that whatever act for which repentance is felt was wrong, but that it will certainly not be done again without good cause. Naturally, people can, and should, repent of their wrongdoing, of those acts which are immoral, because they are immoral. The Ten Commandments pretty well cover the ground in that regard. However, one may also repent over other acts which run the gamut from foolish to moral.

Even God has repented of doing some of the things that He's done. When He has executed harsh punishment, He has regretted having to have done it, not that it was wrong, but, that it grieved Him to have taken such measures. The flood of Noah was a good example, and the rainbow is his continuing sign of repentance and his guarantee against that same punishment ever being exacted again. Of course, that does not mean that He will not punish at all, just not that way.

People can also repent of acts which are not necessarily wrong. Some people repent in never-ending fashion about bad habits, like smoking. Some people repent of being overweight and go on diets. The latter two areas of repentance have lots of backsliders, though. And, there are very few people who have not repented over letting a salesman push past their sales resistance and into their pocketbooks for a bill of goods. Nothing immoral there about which to repent; people should repent of having been duped by slick-talking salesmen.

Just as surely, citizens who may have formerly been unknowing dupes of the perverted and corrupt system of income taxation in this country can, and should, repent of having been duped by the slick-talking purveyors of a thousand and forty different schemes to defraud you of your rights. The "known, legal duty" to file an income tax return was, and is, a fraud and a con perpetrated by the evil men who either did know better, or were required to know better.

How shall we correct this situation?

On one side, there is the cabal of evil men and women who have cast their lot with Philander Knox and his robber baron conspirators. They have an enormous vested interest in maintaining the status quo. They have their jobs—judge, prosecutor, I.R.S. employee—and they apparently believe that their livelihood depends upon ensuring

ons, who are more in control of industry, to be sure, but, also, more in control of the media, more in control of religion, more in control of education, and more in control of organized philanthropy. For the errand boys of the new robber barons to admit wrongdoing now could be financially, and otherwise, catastrophic. For men like Judge Leighton, one real alternative under the heading of "otherwise" is a nightmare of armed insurrection. But their fears are far more correctly placed in the deadly hired assassins of their taskmasters who would be displeased to the point of committing the ultimate act if any of their servants were to bolt from the system. Lafayette Baker's last testament speaks of the paralyzing fear that a trusted agent of the powerful experiences as he becomes aware that he is being hunted down. Few, if any, of these low-level co-conspirators in the Sixteenth Amendment fraud will ever repent of their wrongdoing, even though, in their case, repentance is required for the salvation of their souls. At best, they will excuse themselves and ignore any clamor for redress.

On the other side, there are those who have decided that we'd rather go down fighting than allow the cabal to roll over this nation unchallenged. The sacrifices have been considerable. Many have gone to prison. Some have been murdered. Others have been brutalized, mentally, emotionally and physically. There are those who have seen their homes seized or burned down. All have suffered financially. There are those who have repented of fighting the tax beast. That path is the one which is probably irreversible. In the Soviet Union, those wishing to escape the oppression, who are misnamed "defectors," are looked upon with extreme disfavor. However, having once successfully gained freedom, a defector must never willingly return. Those who do return are much more prone to be shot for any indiscretion.

Between the two sides, there is the great middle. Those who live there feel moderately safe, comfortable and disinclined to do anything, except cooperate in the fraud. Those people are actually in the most danger of all. Theirs will be a fearful end.

> I know your deeds, that you are neither cold nor hot; I would that you were cold or hot.
> So because you are lukewarm, and neither hot nor cold, I will spit you out of My mouth. Revelation 3:15-16 (New American Standard Version)

* * *

Those who pretend to be in positions of authority should be absolutely sure that they have a right to their claim of authority because along with any claim of authority goes the immense burden of having to be absolutely in line with the Supreme Law of the land.

Josiah was a King of Judah, in the line of David, his spiritual father, who reigned in the 7th Century B.C. at Jerusalem. Josiah's biological father, Amon, had been an evil king, refusing to obey the Law, and was assassinated by his own servants. Josiah, however, turned from Amon's path.

> And he did that which was right in the sight of the Lord, and walked in the ways of David his father, and declined neither to the right hand, nor to the left. II Chronicles 34:2 (King James Version)

Josiah was only eight years old when his reign began. When he turned sixteen, he decided to seek after the God of David. By the time he was twenty, he was ready to

not been blessed with rulers who had diligently followed the Law and, consequently, the practice of kingship had seriously deteriorated. Josiah initiated a project to rebuild the Temple of God that had fallen into disrepair through disuse. In the process, the faithful priests of God made a discovery.

> And Hilkiah the high priest said unto Shaphan the scribe, I have found the book of the law in the house of the Lord. II Kings 22:8

Shaphan, an honest lawyer, was entrusted with that book (which had been given by Moses) to deliver to King Josiah. Shaphan read the book of law to the king.

> And it came to pass, when the king had heard the words of the law, that he rent his clothes. II Chronicles 34:19

In those days, tearing your clothes was the sincerest sign of repentance. Josiah, who had diligently sought to obey the Law, realized that he had not. It had been impossible without being able to know precisely what the Law said. The king then ordered the priest and several lawyers to ask God what should be done.

> Go, enquire of the Lord for me, and for them that are left in Israel and in Judah, concerning the words of the book that is found: for great is the wrath of the Lord that is poured out upon us, because our fathers have not kept the word of the Lord, to do after all that is written in this book. II Chronicles 34:21

Josiah had made reforms but they were incomplete because he hadn't known the real Supreme Law of the land because it had been suppressed by the priests who then corrupted the principles of the Law whenever it pleased them or the kings. Josiah was given another chance, and his proper zeal in bringing the entire nation to repentance for having strayed from that Law stayed the hand of judgment against Judah. First, the king read the Law to the gathered nation.

> And the king sent, and they gathered unto him all the elders of Judah and of Jerusalem.
> And the king went up into the house of the Lord, and all the men of Judah and all the inhabitants of Jerusalem with him, and the priests, and the prophets, and all the people, both small and great: and he read in their ears all the words of the book of the covenant which was found in the house of the Lord. II Kings 23:1-2

Next, King Josiah pledged himself to total obedience to the true Law. And all the people stood up and made the same pledge.

There followed one of the greatest, righteous purges in all of history. Josiah commanded the high priest to remove all the heathen artifacts from the temple and destroy them. Then, Josiah personally executed the heathen priests who had defiled the temple. He dragged the pagan idol out of the temple, burned it and ground it to powder, throwing the dust in a graveyard. To finish cleansing the temple, the houses of the male prostitutes were torn down.

Utilizing all the priests in the nation, every pagan place of worship was desecrated and destroyed. Topheth, where child sacrifices were made, was destroyed. Even the temples and altars, which Solomon had built for his many wives, were completely

tion, had their turn.

> And all the priests of the high places who were there he slaughtered on the altars and burned human bones on them; then he returned to Jerusalem. II Kings 23:20 (New American Standard Version)

When Josiah returned to Jerusalem, he restored all the lawful celebrations and holy days, thoroughly eradicating all traces of the unlawful practices which had become common in Judah. There had never been a king in the history of the nation who had so dedicated himself to obeying the true Supreme Law.

> And before him there was no king like him who turned to the Lord with all his soul and with all his might, according to all the law of Moses; nor did any like him arise after him. II Kings 23:25 (New American Standard Version)

That was an unstinting, unrelenting return to the true Law. Is it necessary to go to that extent in this nation? God forbid that we would have to, but the reality is that there is no Sixteenth Amendment to the United States Constitution. There is no income tax for private individuals. What is the Supreme Law of this land? The Supreme Law of this land is apportionment for all direct taxes, including any tax on income. How far must we go to restore the Supreme Law of this land? The federal judges, federal prosecutors and Internal Revenue Service employees all have a dilemma. They have gone very, very far in aiding this purposeful and knowing destruction of the Supreme Law of this land, hiding it beneath a thick layer of malicious acts stretching from 1913 to the present day. King Josiah had one answer, the only answer, for restoring a long hidden Supreme Law—enforce it without hesitation or regard to persons.

George Washington, in his Farewell Address, counselled a sacred maintenance of the "free constitution," and sternly warned against "cunning, ambitious and unprincipled men" who would be willing "to subvert the Power of the People, and to usurp for themselves the reins of Government; destroying afterwards the very engines which have lifted them to unjust dominion." Most importantly, Washington warned against deviating from the Constitution:

> Towards the preservation of your Government and the permanency of your present happy state, it is requisite, not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of **innovation** upon its principles however specious the pretexts. **One method of assault may be to effect, in the forms of the Constitution,** *alterations* which will impair the energy of the system, and thus to undermine what cannot be directly overthrown. (emphasis added)

The American people are the sovereigns in this country. We are the ones who truly have authority. And we may take back whatever authority has been delegated to our servants, including the federal judges, prosecutors and tax collectors. When a servant abuses delegated authority or usurps his master's authority, trouble is inevitable. We are told in Proverbs that one of the three things for which "the earth is disquieted" and one of the "four [things] which [the earth] cannot bear" is when the servant reigns. Proverbs 30:21-22. When a servant has wronged his master, he must suffer the

hath done: and there is no respect of persons. Colossians 3:25 (KJV)

And, according to Scriptures, wicked servants were punished because they blasphemed God Almighty through their disobedience.

> Let as many servants as are under the yoke count their own masters worthy of all honour, that the name of God and His doctrine be not blasphemed. I Timothy 6:1

Those servants who have dared to defy the sovereign and do not turn back from their defiance must be deterred from their treason against the sovereign and the Supreme Law. It is just, proper and necessary.

There is another course of action which those caught in the dilemma could take rather than waiting for sovereign judgment—the course of repentance.

Zaccheus was a publican, a tax collector, who repented of his thieving. His method of repentance was very simple.

> Behold, Lord, the half of my goods I give to the poor; and if I have taken any thing from any man by false accusation, I restore him fourfold.
> And Jesus said unto him, This day is salvation come to this house . . . Luke 19:8-9 (KJV)

I.R.S. agents typically will scoff at such a suggestion. Unfortunately for them, tax collectors are singled out as the chief offenders against mankind. The Biblical admonition against sinners is more frequently against "the publicans and the sinners" than in any other fashion. On point, tax collectors seem to have only one path to repentance.

Judges and prosecutors may look to Nicodemus, the Pharisee, or priest-judge, as an example. Nicodemus had heard Jesus speak and saw Him perform miracles. Knowing that Jesus had something very special, Nicodemus went to Him late one evening to ask Him what he had to do to receive that something special. Jesus told Nicodemus that he had to be born again spiritually and then, delivered one of the great messages of the Bible.

> For God so loved the world, that he gave his only begotten Son, that whosoever believeth in him should not perish, but have everlasting life. John 3:16 (KJV)

Belief in Jesus does not consist merely in believing that He was an historical person. And belief in Jesus does not consist merely in a thought process, but must be actuated through deeds. The Pharisees were not known for their humility. They were, quite bluntly, arrogant. Jesus said that "the publicans and the harlots go into the kingdom of God before [the Pharisees]"; see Matthew 21:31. Yet, Nicodemus, as arrogant as any, perceived the higher Law in Jesus' words. Nicodemus went back into the dark night with a significant spiritual dent in his judicial armor.

> And this is the condemnation, that light is come into the world, and men loved the darkness rather than light, because their deeds were evil.
> For every one that doeth evil hateth the light, neither cometh to the light, lest his deeds should be reproved.
> But he that doeth truth cometh to the light, that his deeds may be made

Federal judges in this land who wish to repent of their acts of treason in destroying the true law of this land ought to consider Nicodemus. There are probably other methods to make amends, but not many. The judges should also consider Saul of Tarsus, who became Paul the Apostle, forgiven of his blasphemies because he did it in ignorance (I Timothy 1:13) and subsequently given great honor. What would have happened if he had not admitted his guilt and repented of his sins against the highest authority? Paul's answer was that there would have been no more opportunities.

> For if we sin wilfully after that we have received the knowledge of the truth, there remaineth no more sacrifice for sins,
> But a certain fearful looking for of judgment and fiery indignation, which shall devour the adversaries. Hebrews 10:26, 27.

Is this the frame of mind which Judge Leighton was in when he converted President Reagan's "peaceful revolution" into an armed resurrection? Jesus made it clear that when judges commit crimes, they are the highest crimes of all.

> Woe unto you, scribes and Pharisees, hypocrites! for ye are like unto whited sepulchres, which indeed appear beautiful outward, but are within full of dead men's bones, and of all uncleanness.
> Even so ye also outwardly appear righteous unto men, but within ye are full of hypocrisy and iniquity. Matthew 23:27, 28

The federal judges have committed a grievous crime. Should they not repent?

to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 84-5460

WILLIAM HOHRI, *et al.*, APPELLANTS

v.

UNITED STATES OF AMERICA

Appeal from the United States District Court
for the District of Columbia
(D.C. Civil Action No. 83-750)

Argued September 24, 1985

Decided January 21, 1986

Benjamin L. Zelenko, with whom *B. Michael Rauh* and *Ellen Godbey Carson* were on the brief, for appellants.

Jeffrey Axelrad, Attorney, Department of Justice, with whom *Richard K. Willard*, Acting Assistant Attorney General, and *Joseph E. diGenova*, United States Attorney, were on the brief, for appellee.

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

George Timothy Gogio was on the brief for *amicus curiae* Japanese American Citizens League, urging reversal.

Before WRIGHT and GINSBURG, *Circuit Judges*, and MARKEY,* *Chief Judge*, United States Court of Appeals for the Federal Circuit.

Opinion for the court filed by *Circuit Judge* WRIGHT.

Dissenting opinion filed by *Chief Judge* MARKEY.

WRIGHT, *Circuit Judge*: In the spring of 1942 the government of the United States forcibly removed some 120,000 of its Japanese-American citizens from their homes and placed them in internment camps. There they remained for as long as four years. When the constitutionality of this action was challenged in the Supreme Court the government justified its actions on the grounds of "military necessity." The Supreme Court deferred. Nearly forty years later, a congressional commission concluded that the government's asserted justification was without foundation. It is now alleged that this fact was concealed from the Supreme Court when it rendered its historic decision in *Korematsu v. United States*. Yet today, now that the truth can be known, the government says that the time for justice has passed. We cannot agree.

This suit was brought by nineteen individuals, former internees or their representatives, against the United States.[1] They seek money damages and a declaratory

* Sitting by designation pursuant to 28 U.S.C. § 291(a) (1982).

[1] Although appellants had moved for class certification, a decision on this motion was postponed pending resolution of appellee's motion to dismiss. In their motion appellants defined the class as the approximately 120,000 citizens and permanent residents, and representatives of such persons no longer living, who were subjected to the evacuation and internment program. *See Hohri v. United States*, 586 F.Supp. 769, 772 n.1 (D. D.C. 1984) (*Hohri*). Because the District

judgment on twenty-two claims, based upon a varie constitutional violations, torts, and breach of contrac fiduciary duties. The United States moved to dismi lack of subject matter jurisdiction under Federal Ru Civil Procedure 12(b)(1). In support of its motio United States cited the applicable statutes of limita sovereign immunity, and the alleged exclusivity of American-Japanese Evacuation Claims Act. The Di Court granted appellee's motion to dismiss. *Hoh United States*, 586 F.Supp. 769 (D. D.C. 1984) (*Ho* We now affirm in part and reverse in part, reman the Takings Clause claims of those appellants who r received awards under the Claims Act for further ceedings.

I. BACKGROUND

A. *Exclusion and Interment*

In the wake of Pearl Harbor the United States mediately took steps to improve security on the W Coast. Initially, attention focused on the activities of anese nationals. *See* Proclamation No. 2525, 6 Fed. 6321 (1941). Interment of these "enemy aliens" be at once. These precautions, however, did not satisfy Commanding General of the Western Defense Comm Lt. General John L. DeWitt. In his *Final Recommen tion of the Commanding General, Western Defense C mand and Fourth Army, to the Secretary of War* (1 14, 1942) (*Final Recommendation*), he urged the eva tion of all Japanese American citizens from the Pac coast. Joint Appendix (JA) 109-110. DeWitt reason

> The Japanese race is an enemy race and while m second and third generation Japanese born on Uni States soil, possessed of United States citizensh have become "Americanized", the racial strains undiluted * * *. There are indications that th

Court granted appellee's motion to dismiss, it never ru upon the class certification motion.

> [Japanese-Americans] are organized and ready for concerted action at a favorable opportunity. The very fact that no sabotage has taken place to date is a disturbing and confirming indication that such action will be taken.

Final Recommendation, JA 109.

On February 18, 1942 DeWitt received legal authority to carry out his policy of racial exclusion. On that date the President signed Executive Order 9066, authorizing the Secretary of War or his designees to prescribe "military areas" from which any person could be excluded. 7 Fed. Reg. 1407, JA 112.[3] DeWitt designated California, western Oregon and Washington, and southern Arizona as "military areas." In so doing, he declared that all persons of Japanese ancestry were to be excluded from these areas. At first, relocation proceeded on a voluntary basis.[4] When this proved inefficient, compulsion replaced exhortation.

The evacuees were given as little as forty-eight hours notice of their impending removal. They were allowed to bring only what they could carry.[5] In the assembly centers—racetracks and fairgrounds—the evacuees were placed in mass barracks housing 600 to 800 people. Beginning in May 1942 they were transferred to permanent relocation centers: camps surrounded by barbed wire and guarded by military police. They were housed one or two

[3] Congress subsequently authorized the arrest, fine, and imprisonment of anyone violating an order issued pursuant to Executive Order 9066. *See* Pub. L. No. 503, 56 Stat. 173, 77th Cong., 2d Sess. (1942).

[4] Executive Order 9066 did not establish means of administering the evacuation. This defect was cured when the President issued Executive Order 9102, 7 Fed. Reg. 2165 (March 20, 1942), creating the War Relocation Authority (WRA).

[5] The government did not take title to the evacuee's property. It offered to take custody of such property, Civilian Exclusion Order No. 5, April 1, 1942, JA 114, or to facilitate its sale. Press Release, March 10, 1942, JA 136.

families to a tar-paper room. They ate and bath
mass facilities.

The majority of the evacuees remained in these
for the duration of the war.[6] According to the Co
sion on Wartime Relocation and Internment of Civ
(CWRIC),[7] detention continued after military au
ties concluded that there was no further military ju
cation for the internment.[8] Motivated by a desire t
ture Western votes in the 1944 election, President R
velt refused to take any "drastic" action. REPOR
THE COMMISSION ON WARTIME RELOCATION AND IN
MENT OF CIVILIANS, PERSONAL JUSTICE DENIED 229 (
(PERSONAL JUSTICE DENIED). Finally, on Novembe
1944 the cabinet decided to end the exclusion; the
Department publicly rescinded the exclusion order o

[6] The military did begin to conduct an individu
"loyalty review" program, providing for the release of
viduals of established loyalty, in February 1943. Bu
program provided only slow, piecemeal release. It wa
until *Ex parte Endo*, 323 U.S. 283 (1944), that the Su
Court held it unlawful to continue to detain an interne
Relocation Center after she had received clearance f
indefinite leave under the loyalty review program. Pri
that decision the WRA refused to release even those int
whose loyalty had been duly certified if the internee d
to live in an area that had not been approved by the
Id. at 293.

[7] The Commission was established by Pub. L. No. 9
94 Stat. 964, 96th Cong., 2d Sess. (1980). It was charged
issuing a comprehensive report on the internment pro
Its report was issued in late 1982. *See* REPORT OF THE
MISSION ON WARTIME RELOCATION AND INTERNMEN
CIVILIANS, PERSONAL JUSTICE DENIED (1982) (PER
JUSTICE DENIED).

[8] By May 26, 1944 Secretary of War Stimson was prop
an end to the exclusion. The new Commanding Gene
the Western Command, C. H. Bonsteel, wrote there w
longer a military necessity for exclusion as of July 3,
PERSONAL JUSTICE DENIED at 228-229.

cember 17, 1944. Administrative delay, however, prolonged detention for many. It was not until March 1946 that the last camp closed.

B. *Deference and Concealment*

In *Hirabayashi v. United States*, 320 U.S. 81 (1943), the Supreme Court considered the constitutionality of the curfew regulations imposed pursuant to Executive Order 9066. In *Korematsu v. United States*, 323 U.S. 214 (1944), the Court considered the constitutionality of the decision to exclude Japanese-Americans from the West Coast. In both cases the Court based its decision on the government's allegations of military necessity. In these two cases the Court erected a virtually insurmountable presumption of deference to the judgment of the military authorities. Appellants allege, however, that the application of this deferential standard was marred by the fraudulent concealment of evidence indicating that there was no rational basis for the mass evacuation program.

1. Hirabayashi: *concealment of evidence and deference to the judgment of the "war-making branches."* The Department of Justice's basic argument in *Hirabayashi* rested on two propositions. First, various cultural characteristics suggested that there was a serious potential for disloyalty by some members of the Japanese-American community. *Hirabayashi*, Brief for the United States at 18-31.* Second, under the exigencies imposed by the military emergency, it was impossible to segregate the loyal

* The government noted the prevalence of dual citizenship among Japanese-Americans, their practice of Shintoism (which entails emperor worship), Japanese language schools on the West Coast, the links between West Coast Japanese organizations and Japan, the large number of Japanese aliens within the community, and a significant number (about 10,000) of Japanese-Americans who had been sent to Japan for their education. *Hirabayashi*, Brief for the United States at 11.

from the disloyal. *Id.* at 61-63. This double-barrelled gument proved decisive. After reviewing the factors gesting that members of the Japanese-American co nity might be disloyal, Chief Justice Stone concluded

> Whatever views we may entertain regarding loyalty to this country of the citizens of Japa ancestry, we cannot reject as unfounded the j ment of the military authorities and of Congress there were disloyal members of that popula whose number and strength could not be prec and quickly ascertained. We cannot say that war-making branches of the Government did have ground for believing that in a critical such persons could not readily be isolated and s rately dealt with * * *.

320 U.S. at 99. The Court, however, did not purport make an independent assessment of the evidence. As Chief Justice indicated, the Court's decision rested and foremost on a pivotal constitutional assumption: t where matters of national security are at issue, the Co must defer to the judgment of the military and of C gress * as the "war-making branches."

* The Court found congressional ratification of the exclus program in Pub. L. No. 503, 56 Stat. 172, 77th Cong., 2d Se (1942), providing for criminal penalties for violation of ders issued pursuant to Executive Order 9066. *See Hirabe aki v. United States*, 320 U.S. 81, 91 (1943). But it is imp tant to recognize that to the extent that the *Hirabaya* Court based its opinion on deference to a congressional ju ment, *see id.* at 90-91, it was only deferring to a *congressio decision to defer* to the military on the validity of the exc sion program. Congress did not make an independent factu analysis. Although hearings were held before the Select Co mittee Investigating National Defense Migration (Tol Committee), none of the witnesses were members of t intelligence community. *See* H.R. Rep. No. 1911, 77th Cong 2d Sess. 4 & n.2 (1942). Moreover, the Committee expressl declared that it based its endorsement of the evacuati program on the need to defer to the judgment of the militar authorities, not on its own analysis of the facts. *See id.* at 1

As the Justice Department prepared its brief, however, Edward Ennis, the Director of the Alien Enemy Control Unit, came into possession of the intelligence work of one Lt. Commander Kenneth D. Ringle, an expert on Japanese intelligence in the Office of Naval Intelligence.[10] Ringle had reached conclusions directly contradicting the two key premises in the government's argument. Ringle argued that the cultural characteristics of the Japanese-Americans had *not* resulted in a high risk of disloyalty by members of that group.[11] Moreover, Ringle expressly concluded

15. *See also* H.R. Rep. No. 2124, 77th Cong., 2d Sess. 11 (1942) (reiterating that "[w]ith respect to the question of the evacuation of the Japanese population * * *, the decision of the military must be final"); PERSONAL JUSTICE DENIED at 98 (concluding that the Tolan Committee merely "assumed that Secretary [of the Navy] Knox knew what he was talking about and that the President was acting on informed opinion"). Thus to the extent that the Court was misled as to the soundness of the military judgment it was similarly misled as to the soundness of the congressional judgment to defer to the military.

[10] Lt. Commander Ringle first compiled his conclusions in K. Ringle, *Report on the Japanese Question* (Jan. 26, 1942) (*Ringle Report*), JA 91-100, which he submitted to the Chief of Naval Intelligence. He subsequently included his conclusions in an article published anonymously in the October 1942 issue of Harpers magazine, under the title *The Japanese in America, the Problem and Solution* (by "An Intelligence Officer"). It appears that although Ennis did not have an actual copy of Ringle's *Report* when he drafted his *Memorandum*, he did have a copy of the Harpers article and knew that Ringle was the author of this article. Ennis also had in his possession a memorandum prepared by Ringle for the WRA on the Japanese-American question. Thus all of Ringle's critical findings, including a verbatim statement of his conclusion that the "Japanese Problem" could be solved on an individual basis, quoted in text *infra* at 9, were included in the materials before Ennis at the time he drafted his memorandum. *See* E. Ennis, *Memorandum for the Solicitor General* (April 30, 1943) (*Ennis I*) at 1, JA 115.

[11] He also noted that the Americanization of the Nisei (American-born) had proceeded quite rapidly (cultural societies and Shintoism notwithstanding). Thus, as to the ... matic dual citizenship imposed by Japanese law, Ringle ... that many of the Nisei had divested themselves of such ... citizenship, even though this entailed loss of property ... in Japan. Finally, he noted that although the ... (American-born Japanese predominantly educated in J... might present a loyalty risk, their identities could be ... tained from government records and they should be ... with as a discrete problem. *See Ringle Report* at 2-5, 102-106.

that individualized determinations *could* be made ... peditiously:

> [T]he entire "Japanese Problem" has been m... fied out of its true proportion, largely becau... the physical characteristics of the [Japanese]... ple * * *. [I]t should be handled on the ba... the *individual*, regardless of citizenship, and ... a racial basis.

K. Ringle, *Report on the Japanese Question* 3 (Ja... 1942) (*Ringle Report*), JA 93 (emphasis in origi...

Ennis knew that Ringle's views could not be dism... as those of a solitary dissident, for Ennis had bee... formed that Ringle's views were shared by his supe... at Naval Intelligence. E. Ennis, *Memorandum fo... Solicitor General* (April 30, 1943) (*Ennis I*) at 2, JA... Ennis also knew that the Army and Navy had previ... agreed that Naval Intelligence would assume respon... ity for the Japanese issue.[12] Nor did Ennis questio...

[12] In support of this conclusion Ringle noted, *inter*... that the number of Japanese aliens and citizens who ... act as enemy agents was less than 3,500 and that the id... of these individuals was well known to U.S. intelli... (indeed, the most dangerous were already in custody)... *Ringle Report* at 2, JA 102.

[13] Indeed, Ennis went so far as to say that "to a very... siderable extent the Army * * * is bound by the op... of the Naval officers in Japanese matters." *Ennis I* at ... 117.

reliability of Ringle's report; on the contrary, he found Ringle's report the "most reasonable and objective discussion of the security problem presented by the presence of the Japanese minority" of all of the "great numbers of reports, memoranda, and articles" that he had perused over the previous year. *Id.* at 3, JA 117. And Ennis fully understood that Ringle's conclusions directly undermined the government's case.[14] He therefore concluded:

> I think we should consider very carefully whether we do not have a duty to advise the Court of the existence of the Ringle memorandum and of the fact that this represents the view of the Office of Naval Intelligence. It occurs to me that any other course of conduct might approximate the suppression of evidence.

Ennis I at 4, JA 118.

Notwithstanding Ennis' plea, the Justice Department's brief made no mention of Ringle's analysis.[15] Equally important, it is now apparent that there were no co vailing professional intelligence analyses justifyin need for a mass evacuation based on race.[16] Thu CWRIC concluded in 1982 that political pressure official intelligence analysis, produced the evacuation, "[i]ntelligence opinions were disregarded or dro out," PERSONAL JUSTICE DENIED at 60, and that " promulgation of Executive Order 9066 was not jus by military necessity * * *." *Id.* at 18.

Mere disclosure of Ringle's analysis to the Court, out more, would not likely have changed the resu *Hirabayashi*.[17] But disclosure combined with a conce that the government had no data rebutting Ringle's ysis *would* likely have influenced the outcome. And t together, the suppression of the Ringle report and absence of countervailing data suggest that the Ju Department misled the Supreme Court when it arg

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[14] Ennis was quite explicit on this point in his memorandum to the Solicitor:

> [I]n view of the fact that the Department of Justice is now representing the Army in the Supreme Court of the United States and is arguing that a partial, selective evacuation was impracticable, we must consider most carefully what our obligation to the Court is in view of the fact that the responsible Intelligence agency regarded a selective evacuation as not only sufficient but preferable * * *. Thus, in one of the crucial points of the case the Government is forced to argue that individual, selective evacuation would have been impractical and insufficient when we have positive knowledge that the only Intelligence agency responsible for advising Gen. DeWitt gave him advice directly to the contrary.

Ennis I at 3, JA 117.

[15] The brief did cite to the Harpers article. Although that article was signed "An Intelligence Officer," there was no way that the Court could have verified this fact. Moreover, the Justice Department did not endorse all of the conclusions in that article. It cited the article only for the proposition that Japanese-Americans educated in Japan would prob be loyal to Japan. *Hirabayashi*, Brief for the United St at 29 n.46.

[16] *See* PERSONAL JUSTICE DENIED at 52-60. Of the pro sional intelligence services, Naval Intelligence and the shared the job of monitoring the Japanese-American sit tion on the West Coast. Ringle's views reflected the opin of Naval Intelligence. FBI Director Hoover expressed view in a memorandum to the Attorney General dated Feb ary 2, 1944. *Id.* at 55 & nn. 33, 35. Hoover believed that Japanese did not rely primarily on Japanese-Americans their espionage work. Only the San Diego and Seattle F field offices supported the concept of a mass evacuation, as the CWRIC observed, "Hoover's own opinion, and thus Bureau's, was that the case to justify mass evacuation security reasons had not been made." *Id.* at 55.

[17] Even disclosure of the Ennis memoranda would not ha altered the result. For Ennis did not assert that there w no basis for the government's position; he argued only th one Naval Intelligence report, "binding" on the Army, contr dicted the government's position. *Ennis I* at 3, JA 117.

that "military necessity" justified a mass evacuation of Japanese-American citizens.[18]

2. Korematsu: *the presumption of deference becomes nearly irrebuttable.* In preparing its *Korematsu* brief the Justice Department simply followed the path cut by *Hirabayashi*. *See Korematsu*, Brief for the United States at 11-12, 26. Similarly, in upholding the evacuation the *Korematsu* Court simply reiterated the *Hirabayashi* rationale: time was short, the situation grave, and it was impossible readily to distinguish the loyal from the disloyal. 323 U.S. at 218-219.[19]

In *Korematsu*, however, unlike *Hirabayashi*, the litigants provided the Court with a wealth of factual material attacking the factual predicates of the government's argument. *See, e.g., Korematsu*, Brief of Japanese-American Citizens League. Yet for the majority the presumption of deference to the "war-making branches," articulated in *Hirabayashi*, settled the matter. 323 U.S. at 218-219.

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[18] Of course, it is possible that the War Department and Justice Department might not have had access to the full range of intelligence reports that the CWRIC was able to uncover. Assuming, *arguendo*, that the government was simply unaware of its own intelligence reports in 1943, the Justice Department would be open to charges of gross negligence in failing to inquire whether the Ringle report was contradicted by other intelligence data. Thus, if only by a decision to remain ignorant, the government appears to have concealed the fact that there was no military necessity for the mass evacuation when it argued *Hirabayashi* to the Supreme Court.

[19] Although the Court did refer to the fact that "investigations made subsequent to the exclusion" had "confirmed" that there were "members of the group who retained loyalties to Japan," the Court clearly was referring to statements made by internees in response to loyalty questionnaires and to requests for repatriation. *Korematsu v. United States*, 323 U.S. 214, 218-219 (1944).

By 1944 the Court could rest its presumption of d
ence to the military judgment on seemingly firmer gr
than had been available in *Hirabayashi*. In the int
the War Department had issued an official analysis o
exclusion and internment program, General DeW
*Final Report, Japanese Evacuation from the West C
1942* (1943) (*Final Report*), supplying "facts" sup
ing the conclusions of the *Final Recommendation*.
though much of the *Final Report* addressed the
whether members of the Japanese-American commu
had actually engaged in espionage or sabotage, the *R*
did purport to provide factual support for the key p
ises of the *Hirabayashi* decision: there was widesp
disloyalty in the Japanese-American community as
was impossible to separate the loyal from the disloy
an efficient manner. *See Hohri*, 586 F.Supp. at 777.

Recently uncovered documents, however, suggest
the Justice Department was less than fully candi
revealing to the Court the untrustworthy character o
Final Report. For example, the *Final Report* alleged
Japanese-Americans had been engaged in shore-to
radio and light signaling to Japanese warships, faci
ing attacks on American ships or shore installations
at 4. By the spring of 1944, however, the Attorney
eral had learned that the allegations of shore-to
signaling were baseless. *See* Letter from FCC Chai
Fly to Attorney General Biddle (April 4, 1944), JA
104 (noting that the evacuation appeared to have no
on radio signaling); Burling, *Memorandum for the A
ney General* (April 12, 1944), JA 119 (discussing
of FBI Director Hoover on shore-to-ship signaling).
again, Ennis had demanded full disclosure and
drafted a footnote for the government's brief to
effect, reading:

> The Final Report of General DeWitt (whi
> dated June 5, 1943, but which was not made
> until January 1944) is relied on in this brie

> statistics and other details concerning the actual evacuation and the events that took place subsequent thereto. The recital of circumstances justifying the evacuation as a matter of military necessity, however, is in several respects, particularly with reference to the use of illegal radio transmitters and to shore-to-ship signalling by persons of Japanese ancestry, in conflict with information in the possession of the Department of Justice. In view of the contrariety of the reports on this matter we do not ask the Court to take judicial notice of the recital of those facts contained in the report.

Quoted in Hohri, 586 F.Supp. at 780. After heated negotiations with attorneys for the War Department, *see* E. Ennis, *Memorandum for Mr. Herbert Wechsler* (Sept. 30, 1944) (*Ennis II*), JA 120, however, Justice merely inserted the following, ambiguous, footnote in its brief:

> The Final Report of General DeWitt (which is dated June 5, 1943 but which was not made public until January 1944), hereinafter cited as *Final Report*, is relied on in this brief for statistics and other details concerning the actual evacuation and the events that took place subsequent thereto. We have specifically recited in this brief the facts relating to the justification for the evacuation, of which we ask the Court to take judicial notice, and we rely on the *Final Report* only to the extent that it relates to such facts.

Korematsu, Brief for the United States at 11 n.2. Thus the final footnote did not adequately alert the Justices to the lack of empirical data supporting the government's claims.[20] For the *Korematsu* majority, DeWitt's statement was the official view of one of the "war-making branches," 323 U.S. at 218, *quoting Hirabayashi*, 320 U.S. at 99. As noted in *Hirabayashi*, in times of military emergency the Court believed that such "war-making branches" only have a "rational basis" for race-related cl cations. 320 U.S. at 102.[21] And the mere fact tha

[20] Indeed, the majority opinion freely cited to the *Final Report* itself, *see* 323 U.S. at 219 n.2, notwithstanding the footnote in the government's brief.

[21] We are aware that in *Korematsu* the Court chang verbal formulation and stated that racial classificatio "immediately suspect" and therefore subject to the rigid scrutiny." 323 at 216. In its next breath, howeve Court reaffirmed *Hirabayashi*'s "conclusion" that the could not second-guess the "finding of the military au ities that it was impossible to bring about an imm segregation of the disloyal from the loyal" which neces resulted in affirming "the validity of the curfew ord applying to the whole group." *Id.* at 219. Thus, alth subsequent cases certainly gave substance to the noti "rigid scrutiny" and "suspect" classifications, in *Kore* itself these phrases accompanied a highly deferential s ard of review. For example, at no point did the Court gest that it would evaluate the exclusion decision to d mine whether it was narrowly tailored to effectuate the tary goals asserted. Nor was this point lost on the Ju at the time. Justice Jackson, in a stinging dissent, force suggested that the "scrutiny" practiced by the *Kore* majority was "rigid" in theory but deferential in fact he said:

> How does the Court know that these orders have a sonable basis in necessity? No evidence whatever on subject has been taken by this or any other court. T is sharp controversy as to the credibility of the De report. So the Court, having no real evidence befo has no choice but to accept General DeWitt's own sworn, self-serving statement, untested by any examination, that what he did was reasonable. thus it will always be when courts try to look into reasonableness of a military order.

See id. at 245 (Jackson, J. dissenting).

That Justice Jackson could find the credibility of DeW report to be a matter of "sharp" controversy indicates willingness to evaluate evidence provided by parties than the political branches of the government. That the jority, by contrast, was less impressed with such evid underscores the importance of the Justice Department's ure to disclose Ringle's analysis.

military's conclusions were hotly disputed, *see, e.g., Korematsu*, Brief of Japanese-American Citizens League, did not make them irrational. Finally, the fact that Congress had "repos[ed] its confidence in this time of war in our military leaders—as inevitably it must," *Korematsu*, 323 U.S. at 223, left little room for judicial reevaluation.[39]

Thus in *Korematsu* the Court crystallized the presumption of deference first articulated in *Hirabayashi*. Once again, the application of this presumption was marred by a failure on the part of the Justice Department to disclose the questionable credibility of the War Department pronouncements. The Court effectively announced that given this presumption of deference no mere incremental evidentiary showing could change its view of the case. Indeed, given the constitutional underpinnings of the Court's holding, it would appear that only a statement by one of the political branches, purporting to assess the evidence as a whole, could have altered the result.

C. *Extension of the Rule in* Korematsu *to Claims for Compensation*

In 1948 Congress enacted the American-Japanese Evacuation Claims Act, 50 U.S.C. App. § 1981 *et seq.* (1982) (hereinafter the Claims Act). Under the Act the Attorney General was given jurisdiction to determine claims for "damage to or loss of real or personal property" filed by former evacuees that were a "reasonable and natural consequence of the evacuation * * *." 50 U.S.C. App. § 1981. The Act provided for specific limitations on

[39] As in *Hirabayashi*, however, deference to Congress did not signify deference to an independent analysis of the critical issue in the case: the practicality of segregating the loyal from the disloyal. In addition to reiterating its deference to the 1942 Act, *see* 323 U.S. at 217, the *Korematsu* Court merely cited congressional findings that there were in fact disloyal members of the Japanese-American community. *See id.* at 219 & n.2.

the types of compensable losses for which claims coul filed.[39] All awards were deemed "final and conclusive all purposes." 50 U.S.C. App. § 1984(d).

The Claims Act, however, was not passed in recogn of a legal wrong inflicted on the evacuees. On the trary, the history of the Act reveals that Congress beli it was acting out of moral impulse, not legal obliga Congress thereby signified its belief that although *Korematsu* holding may only have applied to the val of a criminal conviction, the *Korematsu* rationale tively barred all claims for compensation as well.

The basic justification for the Act was provided 1947 letter written by the Secretary of the Interior t Speaker of the House. This letter was incorporated i House report, H.R. Rep. No. 732, 80th Cong., 1st (1947). It provided the sole explanation for the H bill, H.R. 3999, and provided the following insight the contemporaneous view of the prevailing legal r of the internees:

> The only clear recourse which the evacuees have, through the passage of private relief bil totally impractical. To provide for adjudicati the claims by the Court of Claims would be an position on that court, because of the small ind ual amounts involved and the potential volum claims * * *.

H.R. Rep. No. 732, *supra*, at 3.[40]

[39] *See, e.g.*, 50 U.S.C. App. § 1982(b)(5) (denying pensation for loss of anticipated profits). Similar limits interpolated through subsequent adjudications. *See, e.g.*, *of Mary Sogawa*, 1 Adjudications of the Attorney G 126 (1950) (denying compensation for expenses of the uation); *Claim of George M. Kawaguchi*, 1 Adjudicati the Attorney General 14, 19-20 (1950) (limiting comp tion to purchase price, implicitly denying any intere crement).

[40] The Senate Report merely adopted the House Re statement of the "facts and circumstances" justifyin

In suggesting that the only "clear recourse" then available was through the passage of private bills, the House report indicated that the Committee did not believe the evacuees could state an actionable claim. Similarly, by rejecting the suggestion that the Congress vest jurisdiction in the Court of Claims the report suggests that the Court of Claims did not *already* have jurisdiction to hear such claims under the Tucker Act.[18]

This view was reaffirmed in the subsequent history of the Claims Act. In 1951 Congress amended the Act to allow the Attorney General to settle claims up to $2,500. Both the House and Senate reports affirmed that a perception of "military necessity" supported the evacuation. *See* S. Rep. No. 601, 82d Cong., 1st Sess. 2 (1951); H.R. Rep. No. 496, 82d Cong., 1st Sess. 2 (1951). The House Report once again reprinted the letter of the Secretary of the Interior, restating the view that the evacuees had no cognizable claims absent the Claims Act. *See id.* at 2-3.

In 1956 Congress amended the Claims Act for the last time, allowing the Attorney General to settle claims up to $100,000 and giving the Court of Claims jurisdiction over

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Claims Act. *See* R. Rep. No. 1740, 80th Cong., 2d Sess. 2 (1948). In addition, nearly identical language was included in the predecessor bill to H.R. 399, H.R. 6780. *See* H.R. Rep. No. 2679, 79th Cong., 2d Sess. 4 (1946).

[18] The floor debate surrounding passage of the Act also suggests that Congress believed that *Korematsu* had absolved the United States of civil liability. Although there was general discussion of the need to do "justice," *see, e.g.*, 93 Cong. Rec. 9872 (1947) (remarks of Rep. Walter), there was no suggestion that the Japanese-Americans had suffered a legally cognizable wrong. On the contrary, at least two Representatives insisted, without rebuttal, that military necessity had absolved the United States of all liability. *See* 93 Cong. Rec. 9872-9873 (remarks of Representatives Goff and Gwynne, affirming the legality of the evacuation). At no point was it suggested that the evacuees could gain compensation through the courts.

contested claims. Here the legislative history di
directly address the question of the civil liability
United States absent the Claims Act. The only refe
to this issue can be found in the House report,
merely referred to the legislative history of the 194
itself. *See* H.R. Rep. No. 1809, 84th Cong., 2d Se
(1956). Thus, to the extent that they addressed the
at all, the 1956 amendments indirectly evince a contin
belief in the legality of the evacuation policy.

Finally, in administering the Act the Attorney Ge
took the position that the Claims Act was not predic
on the view that the evacuees had suffered a legal wr
Thus in the leading case of *Claim of Mary Sogum*
Adjudications of the Attorney General 126 (December
1950), the Attorney General explicitly rejected a cl
for compensation for the expenses entailed by the cla
ant in preparing for evacuation and in obtaining ret
transportation. In reaching this decision the Attor
General expressly considered and rejected the view t
the Claims Act was premised on the notion that
evacuees had suffered an actionable wrong. The opin
concluded:

> The foregoing discussion of the legislative hist
> of the Evacuation Claims Act makes it clear, we
> lieve, that it was intended to be an act of bou
> * * *. [I]t may not be adjudicated as if the cla
> ant's evacuation constituted a legal wrong, in
> teeth of the decision of the Supreme Court in t
> *Korematsu* case, *supra*, to the contrary.

Id. at 134.

Thus the "war-making branches" once again reaffirm
their belief that military necessity had provided a leg
justification for the exclusion program. And in no unce
tain terms the Attorney General and Congress had co
cluded that *Korematsu* not only applied to a crimin

conviction but that it also effectively barred claims for compensation arising out of the evacuation program.[20]

The foregoing narrative establishes three points relevant to our analysis. First, the government's suppression of critical evidence in the *Hirabayashi* case contributed to the Supreme Court's conclusion that it must defer to the judgment of Congress and the military authorities that the exclusion program was justified by military necessity. Second, *Korematsu* suggests that the mere presentation of facts contradicting the government's claims could not rebut this presumption of deference; only an official statement by one of the political branches, purporting to assess the evidence when viewed as a whole, could carry that burden. Third, congressional action signalled a general assumption that *Korematsu* not only barred challenges to criminal convictions but applied to civil claims as well. It is against this backdrop that we evaluate the legal contentions of the parties to this suit.

II. Appellate Jurisdiction

Before turning to the merits, we are required to consider whether this court can take appellate jurisdiction over this case. 28 U.S.C. § 1295(a)(2) (1982) provides

[20] The *Sopsuo* principle takes on particular importance in light of congressional silence on this matter throughout the amendment process attending the Claims Act. On two separate occasions Congress had the opportunity to reverse the view expressed in *Sopsuo*. It did not do so. Ordinarily, mere congressional inaction does not shed light on the intent of Congress. *See Aaron v. SEC*, 446 U.S. 680, 694 n.11 (1980). But where the matter has been subject to subsequent congressional attention then congressional acquiesence may be considered among other relevant factors. *Cf. Bob Jones University v. United States*, 461 U.S. 574, 600 (1983). Congressional inaction in this instance may therefore be properly considered as supplementing more direct evidence that the legislature believed that *Korematsu* absolved the United States of civil liability from claims arising from the evacuation.

that the United States Court of Appeals for the Fe
Circuit shall have exclusive jurisdiction

> of an appeal from a final decision of a district
> of the United States * * * if the jurisdiction of
> court was based, in whole or in part, on section
> of this title, *except* that jurisdiction of an appe
> a case brought in a district court under section
> (a)(1), *1346(b)*, 1346(e), or 1346(f) of this
> * * * shall be governed by sections 1291, 1292,
> 1294 of this title * * *.

(Emphasis added.)

Thus Section 1295(a) establishes a general rule
where original jurisdiction is based "in whole or in
on Tucker Act claims (*i.e.*, on Section 1346(a)(2))
Federal Circuit has exclusive jurisdiction. But Se
1295(a)(2) also provides for an exception to this ge
rule. Specifically, Section 1295(a)(2) provides that
original jurisdiction is based, *inter alia*, on Federal
Claims Act (FTCA) claims (*i.e.*, on 1346(b)) the
eral rule—that the Federal Circuit has exclusive a
late jurisdiction over all cases where original jurisdi
was based "in whole or in part" on Section 1346—
not apply.

In this case jurisdiction in the District Court
based, in part, on Section 1346(a)(2) Tucker Act Cl
As an initial matter it might therefore seem prop
apply the general rule stated in Section 1295(a)
assume that the Federal Circuit has exclusive app
jurisdiction. But original jurisdiction in this case
also based on Section 1346(b) FTCA claims.[21] This

[21] The dissent correctly warns against the danger of
shopping in those instances where an attorney adds fri
FTCA claims to Takings Clause claims in order to
appellate jurisdiction in the regional Courts of Appea
we believed appellants' FTCA claims were in fact fri
we would certainly agree with the dissent's conclusion
appeal must lie in the Federal Circuit alone. *Cf. Doe v
Dep't of Justice*, 753 F.2d 1092, 1101-1102 (D.C. Cir.

therefore falls squarely within the "except" clause of Section 1295(a)(2), allowing for appellate jurisdiction in the regional Courts of Appeals.[20]

(refusing to find that the Federal Circuit had exclusive jurisdiction where the plaintiff's characterization of her claim as falling under § 1346(a)(2) was "frivolous"). But, as discussed *infra*, appellants' tort claims are not defective because they are substantively farfetched. Appellants have alleged serious wrongs traditionally compensable at common law. Appellants' tort claims are defective because they failed to appreciate the unyielding ("jurisdictional") character of the filing requirements imposed by the FTCA and mistakenly assumed that the FTCA merely codified the more flexible exhaustion doctrine. Such codifications, however, are hardly unknown. *See WATCH v. FCC*, 712 F.2d 677, 681-682 (D.C. Cir. 1983) (finding that the filing requirement of § 405 of the Communications Act merely codified the judge-made exhaustion doctrine, thereby incorporating its various equitable exceptions). Appellants' failure to grasp in full the distinction between filing requirements that are nonwaivable and those that are subject to waiver on equitable grounds hardly renders their tort claims frivolous.

Any suggestion that the lawyers here indulged in forum shopping is without warrant. *Cf.* dissent at 6-7. No deliberate shopping occurred in this and other recent cases presenting a question as to the interpretation of the newly adopted § 1295(a)(2)—cases such as those cited by the dissent at 8. Rather, the parties, including the government, rarely even adverted to the section. The cases thus reveal the parties' oversight or confusion regarding § 1295(a)(2), not their deliberate attempt to steer the case to a favored forum.

[20] Nor does recent case law of this circuit or the Federal Circuit contradict our analysis. Although *Atari, Inc. v. JS&A Group*, 747 F.2d 1422, 1437 n.13 (Fed. Cir. 1984), took an expansive view of the exclusive jurisdiction of the Federal Circuit, that case concerned the problem of pendent claims in general. Here we do not consider the problem of pendent claims as a generic matter, but only those claims specifically designated by statute as falling within the "except" clause. Nor does *Professional Managers Ass'n v. United States*, 761 F.2d 740 (D.C. Cir. 1985), prevent us from taking appellate jurisdiction in this case. In *Professional Managers* this court rejected the liberal construction of § 1295(a)(2) adopted by

Appellee argues that the "except" clause should be to provide appellate jurisdiction in the regional Cou Appeals only in cases where jurisdiction is based *sole* Section 1346(b). Brief of appellee at 63. Appellee a that such a reading would render Section 1295(a)(2 accord" with Section 1295(a)(1). But as a compa of subsections (1) and (2) of Section 1295(a) de strates, appellee's argument proves too much.

In subsection (1) Congress indicated that the Fe Circuit would have appellate jurisdiction where ori jurisdiction in the District Court was based "in whe in part" on Section 1338(a) (providing jurisdictio cases involving patent, copyright, trademark). As pellee notes, subsection (1) also includes an excep This exception concerns those 1338(a) claims relati copyrights or trademarks. But the "except" clause in section (1) does not contain the same words as "except" clause in subsection (2). In subsection (1) gress explicitly stated that the regional Courts of Ap would only have appellate jurisdiction where the cl related to "copyrights or trademarks *and no other* cl under Section 1338(a)" (emphasis added).[21] By cont subsection (2) does *not* limit the "except" clause to where jurisdiction is based on FTCA claims and other claims" under Section 1346. Given the proxi of subsection (1) to subsection (2), the absence of phrase "and no other claims" is conspicuous indeed.

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the Seventh Circuit in *Squillacote v. United States*, 747 432 (7th Cir. 1984) (refusing to transfer a case to the eral Circuit where that would be inefficient and unfai the litigants), *cert. denied*, 105 S.Ct. 2021 (1985). Here do not base our decision on policy concerns for fairnes efficiency. On the contrary, we take jurisdiction on the b of our reading of the plain meaning of the statutory guage.

[21] The "other" § 1338(a) claims to which this clause re are patent claims. Thus under § 1295(a)(1) the Federal cuit has exclusive appellate jurisdiction over mixed pa and copyright trademark claims.

It seems that where Congress desired to craft a *narrow* exception, preventing the regional Courts of Appeals from hearing cases with mixed jurisdictional bases, it knew how to unambiguously effectuate its will: it included the phrase "and no other claims." On the other hand, where Congress intended to craft a *broad* exception, allowing the regional Courts of Appeals to hear appeals of cases with mixed jurisdictional bases, it also knew what to do: it simply dropped the words "and no other claims" from the terms of the "except" clause.[30] The "except" clause governing our case is of the broader variety. We take appellate jurisdiction accordingly.[31]

[30] The legislative history of the Federal Courts Improvement Act, 28 U.S.C. § 1295 (1982), is not to the contrary. Both the House and Senate reports indicate that § 1295(a)(2) reflects two conflicting policies. On the one hand, Congress sought to centralize the adjudication of claims in which the United States was a defendant. *See* S. Rep. No. 275, 97th Cong., 1st Sess. 3-4 (1981); H.R. Rep. No. 312, 97th Cong., 1st Sess. 42 (1981). On the other hand, Congress did not want to centralize adjudication of cases involving tort claims, which would often tend to turn on issues of state law. In such cases Congress preferred adjudication by the regional Courts of Appeals. *See* S. Rep. No. 275 at 20; H.R. Rep. No. 275 at 20; H.R. Rep. No. 312 at 42.

[31] As indicated *infra*, we affirm the District Court's dismissal of appellants' FTCA claims. Consequently, on remand the case will no longer fit within the "except" clause, original jurisdiction being based solely on § 1346(a)(2). Thus all subsequent appeals of this case will have to be brought in the Federal Circuit, pursuant to the general rule expressed in § 1295(a)(2).

Despite the dissent's unsupported suggestion to the contrary, *see* dissent at 7, our holding on the statute of limitations constitutes the "law of the case." Our decision that we have jurisdiction over this appeal is subject to reversal only by a superior court. Having determined that we do have authority to decide the instant appeal, we are obliged to instruct the District Court on the inquiry it is to pursue on remand. Thus, because we must "actually decide" the statute of limitations issue, our instruction sets the "law of the case." To invalidate this instruction on later review, the Federal

III. Standard of Review

In deciding a motion to dismiss on the pleading
want of subject matter jurisdiction "the allegations
complaint should be construed favorably to the ple
Scheuer v. Rhodes, 416 U.S. 232, 236 (1974). *See*
Walker v. *Jones*, 733 F.2d 923, 925-926 (D.C. Cir. 1
The District Court, however, is not limited to the a
tions of the complaint in deciding a Rule 12(b
motion. Here the District Court properly relied on
pleading material in deciding the motion. 5 C. WRIG
A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 13
549-550 & n.77 (1969 & 1985 Supp.) (collecting
tions).

The District Court, however, did not purport to
any factual findings on disputed issues. *See Hohri*
F. Supp. at 773. To the degree it relied on extra-ple
material it did so only where such documents sup
undisputed facts. *See, e.g., id.* at 788 (relying o
"undisputed" facts in the Ennis and Burling memo
to establish fraudulent concealment). In such ci
stances we engage in an independent review of the
sufficiency of the District Court's views and of its
cation of the law to undisputed facts in the historica
ord. *See Williamson v. Tucker*, 645 F.2d 404, 413
Cir. 1981). In so doing we construe the allegations
complaint most favorably to the appellants unless
allegations are contradicted by the undisputed hist
documents on which the District Court based its judg

IV. Sovereign Immunity

It is well settled that the United States is ame
to suit only in those instances where it has specif

Circuit must find both "clear error" *and* "manifest inju
in our disposition of the uncommon tolling question tha
case presents. *Laffey v. Northwest Airlines*, 740 F.2d
1082 & n.18 (D.C. Cir. 1984), *cert. denied*, 105 S.Ct
(1985).

waived its immunity. Two such waivers are alleged in this case: the Tucker Act, 28 U.S.C. § 1346(a)(2) (1982),[32] and the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.* (1982). Although we find that the Tucker Act does provide a waiver for appellants' claims founded upon the Takings Clause and upon contract, it appears that sovereign immunity bars the residue of appellants' monetary claims.[33]

A. *Waiver Under the Tucker Act*

The Tucker Act waives sovereign immunity only for those claims founded on statutes, regulations, contracts, or provisions of the Constitution that create substantive rights to money damages. *United States v. Mitchell*, 463 U.S. 206, 216-217 (1983).[34] Whether the Tucker Act

[32] Under this provision the District Courts have concurrent jurisdiction with the Court of Claims for actions against the United States not exceeding $10,000. This provision, often referred to as the "Little Tucker Act," *see, e.g., Pandait Corp. v. All States Plastic Mfg. Co.*, 744 F.2d 1564, 1575 n.15 (Fed. Cir. 1984), should be distinguished from 28 U.S.C. § 1491 (1982) which provides for jurisdiction in the Court of Claims for all claims against the United States regardless of the dollar amount.

[33] Appellants also assert claims for declaratory relief and cite 5 U.S.C. § 702 (1982) as a waiver of sovereign immunity for such claims. Because we find no case or controversy adequate to sustain appellants' declaratory claims, *see infra* at 55, we do not consider the effect of sovereign immunity on such claims.

[34] Thus the Tucker Act reads, in pertinent part:

> The District Courts shall have original jurisdiction * * * of * * * any civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort[.]

28 U.S.C. § 1346(a)(2) (1982).

waives sovereign immunity therefore turns on wh plaintiff's claims are based on a statute, regulation, tract, or constitutional provision that "can fairly be preted as mandating compensation by the Federal Go ment for the damage sustained." *United States v. Te* 424 U.S. 392, 400 (1976) (*quoting Eastport S.S. Cor United States*, 372 F.2d 1002, 1009 (Ct. Cl. 1967)). must therefore review each of appellants' non-tort cl to determine which, if any, are based on statutes, cons tional provisions, contracts, or regulations that dem monetary compensation.

1. *The Takings Clause claims.* As the District C noted, appellants' Takings Clause claim "is in essence inverse condemnation proceeding, in which a citizen deprived of property by the government and then m initiate judicial action to obtain just compensation." F. Supp. at 783. It is well established that "an individ claiming that the United States has taken his prope can seek just compensation under the Tucker Act * * *. *Ruckelshaus v. Monsanto Co.*, 104 S.Ct. 2862, 2 (1984). Given the alleged damage to appellants' real a personal property directly caused by the evacuation p gram, there is no question that appellants have stated claim cognizable under the Takings Clause.[35]

Appellee, however, argues that actions taken pursua to a "perceived need to protect the national securit cannot constitute a taking. Brief of appellee at 57. The is no legal support for this proposition.[36] Only a showi

[35] Nor can it seriously be contended that the failure of t government to take title to appellants' property bars the claims under the Takings Clause. *See United States v. Ge eral Motors Corp.*, 323 U.S. 373, 378 (1945). Indeed, the fa that the government forced appellants to give up actual po session and control of their property suggests that it ha committed a taking *per se*. *See Loretto v. Teleprompter Man hattan CATV Corp.*, 458 U.S. 419, 431 (1982) (dicta, collect ing cases).

[36] The cases cited by appellee do not provide the suppor alleged. Thus *National Board of YMCA's v. United States*

William Hohri, et al., v. United States of America

of actual (and not merely imagined) military emergency vitiates a Takings Clause claim. *United States v. Caltex*, 344 U.S. 149 (1952). Here the gravamen of appellants' claim is that there was no such military emergency. The District Court concluded that, given the procedural posture of this case, the allegations of appellants (as plaintiffs below) were dispositive. We agree. *See Scheuer v. Rhodes, supra.*[27]

2. *Contract claims.* Appellants allege breach of express contracts, both oral and written, contracts implied in fact and contracts implied in law. Complaint at 67-68 ¶ 133, JA 73-74. These contracts allegedly concerned the nature of detention, the services (including bailment) to be provided them during detention, and specific protections to be accorded the internees. The contracts allegedly arose from promises made by the relevant authorities and from official conduct.

The Tucker Act, however, waives sovereign immunity only for express contracts and contracts implied in fact. There is no waiver for contracts implied in law or contracts based on equitable principles. *See United States v. Mitchell, supra*, 463 U.S. at 218. Consequently, only appellants' claims for breach of express contracts and contracts implied-in-fact appear to survive this threshold bar.

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395 U.S. 85, 89-90 (1969), merely stands for the proposition that there is no taking where the government incidentally harms plaintiff's property while trying to *protect* that property from rioters. The same is true of *Monarch Ins. Co. of Ohio v. District of Columbia*, 353 F.Supp. 1259, 1255 (D. D.C. 1973), *aff'd*, 497 F.2d 684 (D.C. Cir.) (order), *cert. denied*, 419 U.S. 1021 (1974).

[27] It would also appear that the historical findings of the CWRIC, *see* PERSONAL JUSTICE DENIED at 18, support appellants' allegations on this point. Therefore, it would seem that the extra-pleading evidence of which the District Court took notice, *see* 586 F.Supp. at 772 n.2, supports the District Court's conclusion on this issue.

3. *Fiduciary duty claims.* By contrast, appell fiduciary duty claims are barred by sovereign immu Appellants allege that the "statutes, regulations an ders" promulgated by the United States "establish system of comprehensive and pervasive federal co management, and supervision" over the daily lives o internees. Complaint at 68 ¶ 134, JA 74. Appel argue that such a fiduciary duty included an obligati deal truthfully with the evacuees and that ap breached its duty by failing to disclose the lack of tary necessity for the evacuation. *See* Complaint ¶ 135, JA 75.

Appellants' argument is reducible to the propos that whenever the United States imposes such a perv regulatory scheme it necessarily enters into a fidu relationship with the individuals whose lives it superv Brief of appellants at 42-43. Appellants cite *Mitch* support this proposition. We do not read *Mitchell* to far.

Mitchell construed the clause of the Tucker Act waives sovereign immunity for claims founded on st or regulation. 463 U.S. at 218. The Court held that provision operated to waive sovereign immunity claims of breach of fiduciary duty where specific sta or regulations gave rise to the fiduciary duty in que *Mitchell*, however, found that the relevant statutes regulations, *by their own terms*, explicitly created a ciary relationship by requiring the Secretary of th terior to manage the Quinalt Indians' assets for the interests of the Indian owner * * *." *Id.* at 224 (qu 25 U.S.C. § 406(a) (1982)).[28]

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[28] Regulations also required management of Indian "so as to obtain the greatest revenue for the Indians * *United States v. Mitchell*, 463 U.S. 206, 224 (1983) (qu U.S. Office of Indian Affairs, Regulations and Instru for Officers in Charge of Forests on Indian Reservati (1911)).

In our case there are no analogous statutes or regulations. It is true that the government did sometimes speak of acting for the benefit of the evacuees. *See, e.g.*, Plaintiff's Exhibit Q, War Relocation Authority Tentative Policy Statement, JA 141-146. Within this context the government may have undertaken to treat the internees in a responsible manner. But even assuming, without deciding, that the applicable regulations could be construed to create specific duties to the evacuees, such duties must be distinguished from a comprehensive obligation to provide for the "best interests" of the evacuees. We are reluctant to find that such a distinct, overarching duty is implicit in a narrower set of regulatory obligations.[*]

Appellants also rely on *Juda v. United States*, 6 Cl.Ct. 441 (1984). In *Juda* the court found a tacit contractual

[*] *United States v. Mitchell*, *supra* note 38, did state that "a fiduciary relationship necessarily arises when the Government assumes such elaborate control over forests and property belonging to Indians." 463 U.S. at 225. We do not read this alternative holding, however, as articulating a broad rule in favor of finding fiduciary relationships by implication whenever the government assumes pervasive control over a group's property. Read in context, the Court created only a narrow exception—for Indian tribes—to the requirement that the government must expressly state its intent to manage the would-be beneficiaries' property as a trustee.

We base our narrow reading of *Mitchell* on the Court's reliance on *Navajo Tribe of Indians v. United States*, 624 F.2d 981, 987 (Ct. Cl. 1980). *Navajo Tribe* also appears to limit its finding of an "implicit" trust to dealings between the United States and Indian tribes. This reading of *Navajo* is supported by that opinion's reliance on *Seminole Nation v. United States*, 316 U.S. 286, 296-297 (1942), in which the Court noted that Congress and the judiciary had previously made numerous statements *explicitly* assuming fiduciary obligations. Thus *Mitchell* only stands for the narrow principle that statutes and regulations governing the relations between the United States and Indian tribes may be presumed to contain an implicit assumption of fiduciary obligations, given a history of explicit statements to that effect.

commitment by the United States to act as fiduciar
Bikini Islanders whom the United States removed
their atoll in 1946 while the government tested nu
bombs on that site. *Id.* at 452. Our case is plainly d
guishable. Unlike *Juda*, appellants here have not
alleged that the United States contracted, even tacit
act as a fiduciary. Their fiduciary duty argument is
solely on regulatory obligations. Complaint at
¶ 134, JA 74-75. Moreover, even if, *arguendo*, the U
States did enter into a contractual relationship wit
evacuees, it was a contract to provide specific ser
Just as we are loath to impute a regulatory commit
to act as a fiduciary on the basis of alleged narrow
latory obligations, we are also reluctant to infer a b
contractual commitment to act as fiduciary on the bas
an alleged contract to provide specific services.

4. *Other constitutional claims.* Plaintiffs also a
sundry violations of their constitutional rights under
Due Process,[*] Equal Protection, and Privileges and
munities Clauses of the Fifth Amendment; the Search
Seizure Clause of the Fourth Amendment; the Cruel
Unusual Punishment Clause of the Eighth Amendm
the rights to fair trial and counsel under the S
Amendment; the Press, Speech, Religion, Petition,
Assembly Clauses of the First Amendment; the prob
tion of Bills of Attainder and Ex Post Facto Laws
the right to the writ of habeas corpus under Art. I,
tion 9; and the protection from involuntary servit
under the Thirteenth Amendment. Complaint at 6
¶¶ 112-113, 116-127, JA 66-72. We find that sovere
immunity bars all such claims.

Appellants allege that the Tucker Act's declarat
that the United States is amenable to suit in acti
"founded upon the Constitution" waives sovereign imm

[*] Including the right to substantive due process, travel,
privacy. *See* Complaint at 65 ¶ 124, JA 71.

nity for all of their constitutional claims. Brief of appellants at 47; reply brief of appellants at 17. The law of this circuit [41] and of other circuits [42] is to the contrary.

Appellants argue, however, that because some of these constitutional provisions have been found to mandate compensation in *Bivens* actions against *individual* defendants, this court ought to find that they also mandate compensation in an action against the United States. Brief of appellants at 48, 50-51. This circuit has rejected that view. *See Clark v. Library of Congress*, 750 F.2d 89, 103 (D.C. Cir. 1984); *Monarch Ins. Co. of Ohio v. District of Columbia*, 353 F.Supp. 1249, 1254 (D. D.C. 1973), *aff'd*, 497 F.2d 684 (D.C. Cir.), *cert. denied*, 419 U.S. 1021 (1974). *See also Garcia v. United States*, 666 F.2d 960, 966 (5th Cir.), *cert. denied*, 459 U.S. 832 (1982).[43]

[41] *See Clark v. Library of Congress*, 750 F.2d 89, 103 n.31 (D.C. Cir. 1984) (noting that "[t]he courts have uniformly held that jurisdiction under the 'founded upon the constitution' grant of the Tucker Act is limited to claims under the 'takings clause' of the Fifth Amendment"); *Lombard v. United States*, 690 F.2d 215, 227 (D.C. Cir. 1982) (finding sovereign immunity a bar to First, Fifth, Ninth, and Tenth Amendment claims when such claims could be construed to run against the government itself), *cert. denied*, 462 U.S. 1118 (1983); *Jalil v. Campbell*, 590 F.2d 1120, 1122 (D.C. Cir. 1978) (*per curiam*) (no right to compensation under the equal protection clause).

[42] *See, e.g., Radin v. United States*, 699 F.2d 681, 685 n.8 (4th Cir. 1983); *Jaffee v. United States*, 592 F.2d 712 (3d Cir.) (*en banc*), *cert. denied*, 441 U.S. 961 (1979); *Duarte v. United States*, 532 F.2d 850, 852 (2d Cir. 1976).

[43] Appellants' allegations that these constitutional violations provide the predicate for claims based on the Civil Rights Acts, 42 U.S.C. §§ 1981, 1983, 1985-1986 (1982), is similarly without merit. These statutes, by their terms, do not apply to actions against the United States. *See Timmons v. United States*, 672 F.2d 1373, 1380 (11th Cir. 1982) (§ 1981 does not waive sovereign immunity); *Unimex, Inc. v. HUD*, 594 F.2d 1060, 1061 (5th Cir. 1979) (none of the Civil Rights

B. *Waiver Under the Federal Tort Claims Act*

Appellants allege a series of common law [44] torts Complaint at 66-67 ¶¶ 129-131, JA 72-73,[45] for which claim the Federal Tort Claims Act, 28 U.S.C. § *et seq.* (1982), waives sovereign immunity. Appell failure, however, to comply with the unyielding adm trative filing requirements of the FTCA bars their cl

Under 28 U.S.C. § 2675(a) a plaintiff must fil claim with the appropriate government agency b bringing suit in federal court. This explicit statutor rective applies without exception and therefore has termed "jurisdictional." *See Odin v. United States*, F.2d 798, 802 (D.C. Cir. 1981). The FTCA's mand administrative filing requirement is not to be con with the prudential, judge-made exhaustion doctrin other requirements that indicate a general, but no inexorable, rule. Unlike the exhaustion requirement jurisdictional FTCA filing requirement is not subje equitable waiver.[46] Moreover, whatever the equities a

Acts waive sovereign immunity); *Monarch Ins. Co. of* v. *District of Columbia*, *supra* note 36, 353 F.Supp. at (§ 1983 does not waive sovereign immunity).

[44] Appellants also argue that their *constitutional* tort cognizable under the Federal Tort Claims Act. Althou doubt the validity of this argument, *see Gray v. Bell* F.2d 490 (D.C. Cir. 1983), *cert. denied*, 104 S.Ct. 1593 (1 we need not reach that issue here. Appellants' failure to ply with nonwaivable filing requirements bars *all* claim der the FTCA whatever their substantive legal basis.

[45] Specifically appellants allege assault, battery, false and imprisonment, abuse of process, malicious prosec and negligent damage to their persons and property FTCA bars all claims for intentional torts that arose 1974. *See* 28 U.S.C. § 2680(h) (1982). Because appel however, have failed to comply with mandatory filing re ments we need not reach the thorny question of when lants' claims "arose."

[46] *Compare Keene Corp. v. United States*, 700 F.2 841 (2d Cir. 1983) (refusing to waive the FTCA filin

ing appellants' claims before 1980, there was no reason why appellants should have failed to file their claims *after* 1980 and the congressional declaration releasing the courts from their presumption of deference to the findings of the political branches in this case.[47] Appellants FTCA claims therefore must be dismissed for failure to meet the statute's stringent "file first with the agency" instruction.[48]

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quirement on equitable grounds), *cert. denied*, 104 S.Ct. 195 (1984); *Lunsford v. United States*, 570 F.2d 221, 224 (8th Cir. 1977) (same); *Blain v. United States*, 552 F.2d 289, 291 (9th Cir. 1977) (same); *Best Bearings Co. v. United States*, 463 F.2d 1177, 1179 (7th Cir. 1972) (same); *Bialowas v. United States*, 443 F.2d 1047, 1049 (3d Cir. 1971) (same), *with Athlone Industries, Inc. v. CPSC*, 707 F.2d 1485, 1488 (D.C. Cir. 1983) (exhaustion doctrine is subject to equitable waiver); *Natural Resources Defense Council, Inc. v. Train*, 510 F.2d 692, 703 (D.C. Cir. 1975) (statutory notice requirements at issue found subject to equitable waiver).

Nor do cases concerning waiver of the filing requirement in suits initially brought in state court and subsequently removed pursuant to 28 U.S.C. § 2679(d) (1982) aid appellants' cause. Such cases involve suits initially brought in state court on the theory that the government was not a party and only subsequently removed once it was determined that the employee was acting in his official capacity. Under such circumstances it would be nonsensical to impose a mandatory filing requirement. Consequently, it is not surprising that at least one circuit has found that § 2675(a) does not apply to such cases. *See Kelly v. United States*, 568 F.2d 259 (2d Cir.), *cert. denied*, 439 U.S. 830 (1978). In our case, however, appellants sued the United States from the outset. At no point did appellants purport to be suing an employee of the United States acting in his individual capacity. Section 2675(a) therefore applies and cannot be waived.

[47] For an analysis of congressional action in the 1980's, *see infra* at 49-50.

[48] Nor can this court "stay" these proceedings and allow appellants to now comply with § 2675(a). Even if this were a proper course of action it would not aid appellants for their attention to § 2675(a) comes too late. Under 28 U.S.C. § 2401(b) (1982) a claimant must file with the appropriate agency

V. Statute of Limitations

28 U.S.C. § 2401(a) (1982) is the statute of limit governing appellants' Taking Clause and contract cl It provides that a claim must be filed within six ye the time that the "right of action first accrues." Ap argues that appellants' cause of action first "acc when appellants' were first subjected to the evacu program. Brief of appellee at 16. For their part a lants argue that because the government fraudulently cealed essential elements of their cause of action statute of limitations was tolled until they actually covered the facts that had been concealed. Brief of a lants at 28. The law of this circuit supports neither Instead, our cases hold that when a defendant fra lently conceals the basis of a plaintiff's cause of action, statute of limitations is tolled until the time that a sonably diligent plaintiff could have discovered the ments of his claim. Applying this standard to the cas bar, we hold that although appellants' contract claims barred by the statute of limitations, appellants' Tak Clause claims were timely filed.

A. *The Due Diligence Doctrine*

1. *The applicable rule.* In *Fitzgerald v. Seamans*, F.2d 220, 228 (D.C. Cir. 1977), this court stated:

> Read into every federal statute of limitations * is the equitable doctrine that in the case of defe ant's fraud or deliberate concealment of mate facts relating to his wrongdoing, time does not be to run until plaintiff discovers, or by reasona diligence could have discovered, the basis of the l suit.

The due diligence doctrine was reiterated in *Richards Mileski*, 662 F.2d 65, 71 (D.C. Cir. 1981), where Jud

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within two years of the time a claim "accrues." Even assu ing that appellants' claims did not "accrue" until early 19 the statute has now run. *See Schuler v. United States*, 6 F.2d 199, 201 (D.C. Cir. 1980) (*en banc*) (*per curiam*).

Mikva, writing for the court, noted that the fraudulent concealment of a plaintiff's "cause of action" would toll the statute of limitations until a plaintiff has, or through due diligence should have had, notice of his claim. *See also Smith v. Nixon*, 606 F.2d 1183, 1191 (D.C. Cir. 1979). More recently, in *Hobson v. Wilson*, 737 F.2d 1, 35 (D.C. Cir. 1984), *cert. denied*, 105 S.Ct. 1843 (1985), Judge Edwards refined this standard by stating that fraudulent concealment would toll the statute of limitations until a plaintiff could have discovered "facts giving notice of the particular cause of action at issue, not of just any cause of action."

Appellee argues, however, that the due diligence doctrine is not applicable to this case because fraudulent concealment cannot toll a statute of limitations governing claims against the United States. Brief of appellee at 20. And although *Fitzgerald* declared that the doctrine of tolling for fraudulent concealment must be read into "every" statute of limitations, 553 F.2d at 228, this court has not previously addressed the question of whether "every" statute of limitations necessarily includes statutes of limitations governing claims against the United States.

Appellee largely rests its argument on *Block v. North Dakota ex rel. Board of University and School Lands*, 461 U.S. 273, 287-288 (1983), and *Soriano v. United States*, 352 U.S. 270, 276 (1957). These cases firmly establish the proposition that statutes of limitations governing claims against the United States, as conditions on waivers of sovereign immunity, are to be strictly construed. Fully aware of this principle, we nonetheless believe that fraudulent concealment tolls 28 U.S.C. § 2401(a) (1982), the statute of limitations at issue in this case.

An analysis of the historical background of 28 U.S.C. § 2401(a) supports the view that fraudulent concealment does toll the statute. Long before the predecessor to Section 2401(a) was first enacted in 1863, 12 Stat. 765 (37th Cong., 3d Sess. March 3, 1863), a majority of United States jurisdictions has held that a defendant's subsequent concealment of a fraud would toll the st of limitations. *See Bailey v. Glover*, 88 U.S. (21 V 342, 348-349 (1875) (collecting cases).[48] Not su ingly, the Supreme Court has held that "[t]his equ doctrine is read into every federal statute of limita *Homberg v. Armbrecht*, 327 U.S. 392, 397 (1946). eral federal Courts of Appeals have therefore held fraudulent concealment by the United States will to statute of limitations. *See, e.g., Barrett v. United S* 689 F.2d 324, 329-330 (2d Cir. 1982), *cert. denied* U.S. 1131 (1983); *Walker v. United States*, 752 1577, 1580 (Fed. Cir. 1985). *See also Japanese Notes Claimants Ass'n of the Philippines, Inc. v. U States*, 373 F.2d 356, 358-359 (Ct. Cl.), *cert. denied* U.S. 971 (1967).[49]

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[48] It is the settled law of this circuit that the rule of *B v. Glover* extends to cases where the underlying cause tion was not based on fraud. *See Hobson v. Wilson*, 737 1, 33 (D.C. Cir. 1984), *cert. denied*, 105 S.Ct. 1843 (1 According to *Hobson*, the only operative difference bet cases where the underlying cause of action sounds in and a case such as that at bar is that in the former the of action itself is self-concealing while in the latter th fendant must perform a subsequent act of concealment b the plaintiff can allege fraudulent concealment. *But cf Coy v. Wesley Hospital & Nursing Training School*, 188 325, 362 P.2d 841, 847 (1961) (restricting the rule of *B v. Glover* to cases where the underlying cause of a sounds in fraud).

[49] Our research reveals only two District Court opi and two Court of Appeals opinions suggesting that fraud concealment does not toll a statute of limitations gove claims against the United States. None are on point. *See v. Beehner*, 455 F.Supp. 604, 606 (N.D. N.Y. 1978) (fi that the equitable considerations raised by wrongful cealment did not toll the statute of limitations in a Fe Tort Claims Act case but not addressing the question of gressional intent in passing the applicable statute of li tions); *Hammond v. United States*, 388 F.Supp. 928 (E.D. N.Y. 1975) (finding that fraudulent concealmen not toll the statute of limitations but relying on the that at that time the FTCA expressly exempted the U

The foregoing suggests that it would have been inconceivable to the drafters of the statute to read it as exempting the United States from the doctrine of tolling for fraudulent concealment.[41] This conclusion does not contradict the proposition that Section 2401(a) must be strictly construed.[42] We do not interpolate a provision of tolling for fraudulent concealment on the basis of our notions of equity.[43] Rather, we believe that the 1863 Con-

gress simply assumed that this doctrine was incorpo
in "every" statute of limitations and that it wou
violence to the intent of Congress for us to hold t
contrary.

For rather different reasons appellants also argue
the due diligence doctrine is not applicable to this
Our previous cases applying the due diligence doc
concerned wrongs that were "self-concealing." *See Ho
v. Wilson*, *supra*, 737 F.2d at 34. Noting that this
concerns a wrong that is usually knowable but which
only been obscured by an alleged subsequent positive
of concealment, appellants argue that we should re
the due diligence rule in favor of a standard provi
for tolling of the statute until a plaintiff had "actu
discovered" what was concealed. Brief of appellants at
There appears to be a split in the circuits on this po
Compare Tomera v. Galt, 511 F.2d 504, 510 (7th
1975) (applying an actual discovery rule), *with Camp
v. Upjohn Co.*, 676 F.2d 1122, 1128 (6th Cir. 19
(applying the due diligence rule).[44]

Given the particular facts of this case, we can
accept the "actual discovery" standard suggested by
pellants. It is the legal effect of fraudulent concealm
that tolls the statute, not its immorality. It is one thi
to toll the statute of limitations until a reasonable pla

States from liability for the fraudulent torts of its employees). As for the Court of Appeals opinions, *see Richter v. United States*, 551 F.2d 1177 (9th Cir. 1977) (merely citing *Hammond* and providing no further analysis); *KSLA-TV, Inc. v. Radio Corp. of America*, 732 F.2d 441, 443 (5th Cir. 1984) (*per curiam*) (finding that fraudulent concealment did not toll a Louisiana statute of peremption).

[41] There is no indication that Congress considered the question of fraudulent concealment and then failed to address the issue in the legislation itself. *See Congressional Globe*, 37th Cong., 3d Sess. 415-416 (Jan. 21, 1863).

[42] Nor does it contradict *Kendall v. United States*, 107 U.S. (17 Otto) 123, 125 (1883), in which the Court held that the 1863 Act's ennumeration of "disabilities" that might toll the statute of limitations were not to be enlarged. Although appellants have alleged that their psychological condition during the post-war period should affect our tolling analysis, *see* brief of appellants at 31, we have refrained from adopting their suggestion. Our opinion does not turn on any alleged "disability" of the appellants, but rather on the conduct of the appellee.

[43] The doctrine of tolling for fraudulent concealment may originally have been of equitable origin, but according to *Bailey v. Glover*, 88 U.S. (21 Wall.) 342, 348-349 (1875), it had been assimilated into legal doctrine by the late 19th century and did not merely apply to bills in equity. In this connection it should be noted that we reject appellants' suggestion that the government is equitably estopped from raising the statute of limitations defense. Brief of appellants at 38. The statute of limitations is jurisdictional. *See Soriano v. United States*, 352 U.S. 270 (1957). Thus, even if appellee's actions were so egregious as to constitute one of those rare circumstances where estoppel of the government might be appropriate, *see Heckler v. Community Health Services of Cra
ford*, 104 S.Ct. 2218, 2224 (1984), this court would still ha
an obligation to consider the issue on its own motion. *S
Insurance Corp. of Ireland, Ltd. v. Compagnie des Bauxit
de Guinee*, 456 U.S. 694, 702 (1982).

[44] This split may be more apparent than real. As noted
Campbell v. Upjohn, 676 F.2d 1122, 1128 (6th Cir. 1982)
the effect of all tolling rules is usually to nullify the effect
fraudulent concealment on the reasonably diligent plaintif
Thus the "actual discovery" cases appear to have generall
concerned situations where concealment had been so effectiv
that there was no reason for a diligent plaintiff to have en
tered into any inquiries as to a possible cause of action.

tiff could undo the effects of concealment. It is quite another matter to discharge a plaintiff completely from his usual obligations to conduct reasonable inquiries into the grounds supporting his cause. The former course merely nullifies the effect of concealment. It allows the statute of limitations to operate in the manner that Congress provided and under the assumption that Congress did not intend for the United States to abuse such statutes by engaging in conscious frauds. The latter approach, by contrast, serves as a punitive measure and perhaps as a deterrent of future fraud. Although such deterrence might make sound policy, we refuse to imply it in an action against the United States absent a congressional suggestion in that direction.

2. *Interpreting the due diligence rule.* Unfortunately, our cases do not provide operational definitions of the key terms of the governing standard. Thus tolling is triggered by concealment of the "facts giving notice of the particular cause of action at issue." *Hobson v. Wilson, supra*, 737 F.2d at 35. What falls within the ambit of that phrase, however, is not self-evident. Similarly, the statute begins to run when a "duly diligent" plaintiff would have discovered that which was concealed; but "due diligence" is hardly self-explanatory. Because the facts of this case are *sui generis*, we will refrain from definitively restating the due diligence doctrine. This is not the occasion to establish a new rule to govern future cases. We seek only to clarify our prevailing formula so that there is no mystery as to the basis of our decision here.

(a) *What tolls the statute: concealment of the "factual basis of a complaint."* Appellee argues that the "facts giving notice of the particular cause of action at issue" include only the fact of injury and the identity of the inflictor. Brief of appellee at 22, 24. We do not agree. As already noted, in assessing the import of fraudulent concealment we are first and foremost concerned with its *legal effect.*[39] Once defendant has effectively closed courthouse door to all plaintiffs it is of little signific that defendant has not also concealed his identity o fact of injury.[40]

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[39] This is not to suggest that knowledge of injury an injurer is without legal significance. Awareness of these plainly puts a plaintiff on notice to conduct further inq into the nature of his claim. But to be on notice of an o tion to inquire is not the same thing as to have notice o factual basis of one's claims. *See Hobson v. Wilson,* note 49, 737 F.2d at 35.

[40] Our analysis should not be taken to contradict *U States v. Kubrick*, 444 U.S. 111 (1979). *Kubrick* simpl not address the question of when fraudulent concealmen toll the statute of limitations. Rather, *Kubrick* conc the question of when a cause of action "accrues" in a where there have been no allegations of fraudulent co ment. Indeed in *Kubrick* the defendant's failure to co facts pertinent to the question of causation was deem be of little importance given that the plaintiff could hav covered the relevant information by asking any comp doctor. *Id.* at 122. Thus the holding in *Kubrick*, that a of action "accrues" under 28 U.S.C. § 2401(b) (1982) a victim of medical malpractice is aware of his injur not when he he had reason to know all facts pertinent cause of action, *id.* at 125, does not contradict our an here. Our research reveals only one Court of Appe have suggested, even in dicta, that *Kubrick*'s analys what a plaintiff must know to start the running of the ute of limitations in the absence of fraudulent conceal might apply to cases that do turn on fraudulent conceal *See Premium Management, Inc. v. Walker*, 648 F.2 (1st Cir. 1981). We believe logic to be on the side of Courts of Appeals that have rejected this extension o *brick. See Arroyo v. United States*, 766 F.2d 1416, 1422 Cir. 1985) (applying *Kubrick* but stressing that there no issue of concealment); *Barrett v. United States*, 689 324, 328-330 (2d Cir. 1982) (refusing to extend the *K* rule where the extent of fraudulent concealment was issue).

Moreover, not only does our analysis not conflict wi holding of *Kubrick*, but we believe it to be in accord the underlying rationale governing that case. The *K*

Thus, where a defendant concealed information that prevented plaintiff from alleging a crucial element of his claim, the statute would be tolled.[37] Nor would it change our analysis if a defendant had achieved the same effect by concealing facts that would prevent a plaintiff from overcoming a seemingly ironclad defense. For, as the District Court suggested, where the result is the same—to prevent a law-abiding plaintiff from filing a complaint—it matters little whether the issue is labeled a "claim" or a "defense." 586 F.Supp. at 787.

(b) *When the statute begins to run.* "Due diligence" also lacks a precise definition. But unlike the concept of the "factual basis of the complaint," the concept of "due diligence" is best left unfocused. As we read our cases, "due diligence" refers to a fact-specific judgment in each case as to what a reasonable plaintiff could be expected to do. *See Richards v. Mileski, supra*, 662 F.2d at 71.

Nonetheless, two specific guidelines do emerge from our cases. First, in evaluating the extent of a plaintiff's con-

Court based its holding on the view that a victim of medical malpractice has some duty to make further inquiries about his condition once he is aware of his injury. 444 U.S. at 118, 122-123. Thus Kubrick need merely have asked some doctor other than the one that had treated him about his condition and he would have quickly obtained all the information he needed to state a claim. *See id.* at 122 n.10. As noted below, we would require appellants, even though the victim of fraudulent concealment, to conduct the sort of inquiries mandated by the *Kubrick* Court.

[37] Lest our view be misconstrued, we would stress that the statute of limitations is not tolled whenever a defendant has concealed facts material to *any* legal issue of significance in a case. We do not provide for tolling simply because a plaintiff's ability to mount a successful case has been impaired in some degree. Instead, we provide for tolling only when concealment has so impaired the plaintiff's case that he is not able to survive a threshold motion to dismiss for failure to tender a claim that would advance beyond the pleading stage.

structive knowledge a court ought to pay careful att to whether plaintiff was ever put on notice that fu inquiries might be appropriate. *See Hobson v. W supra*, 737 F.2d at 35 n.107. Of course, a court mus make a situation-specific judgment as to when (o subsequent inquiries might have produced the "fa basis" of a good faith complaint. But an initial d mination on when a plaintiff was put on "inquiry no will help to narrow the issue. On the other hand, fact that a plaintiff is on "inquiry notice" does without more, begin the running of the statute. *See i* 35. Inquiry notice is merely a necessary, but not a s cient, condition for the running of the statute. Whe such inquiries would lead a diligent plaintiff to disc that which was concealed will naturally vary with facts of each case.

B. *The Doctrine Applied*

The foregoing suggests that not every act of conce ment will toll the statute of limitations. Concealm must go to a critical element or defense attending e particular cause of action. *See id.* at 35. We must the fore analyze the disparate effect of appellee's course conduct on the only two claims that are not barred sovereign immunity: the Takings Clause and contra claims.

1. *The Takings Clause claims and the military eme gency doctrine.* In their complaint appellants alleged th the United States concealed the fact that there was n military necessity justifying the exclusion, evacuation, an internment program. Complaint at 52-53 ¶ 96, JA 58 59. The District Court, however, did not restrict its judg ment to the pleadings. As previously noted, the Distric Court also looked to certain undisputed facts in the his torical record.[38] After reviewing this material the Dis-

[38] Specifically, the District Court examined the CWRIC re port and certain intelligence and Justice Department docu ments.

trict Court concluded that it did appear that the United States had concealed critical evidence during the wartime legal challenges to the exclusion program, 586 F.Supp. at 787-788. The District Court assumed, however, that the government's act of concealment was limited to its alleged suppression of the Hoover, Fly, and Ringle memoranda. *See id.* It noted that these documents were in the public domain as early as 1949. *Id.* at 788.[39] It therefore concluded that although the statute of limitations may have been tolled for a time the statute had run long before appellants filed their claims in 1983.

We do not dispute the District Court's reading of the historical record.[40] But because we believe the District Court's analysis to have rested on a legally defective premise, we reverse this aspect of its judgment.

(a) *What was allegedly concealed.* Paragraph 95 of appellants' complaint, Complaint at 52, JA 58, alleges that the government "excluded from the record of pending court actions * * * evidence contradicting the so-called 'military necessity' for mass imprisonment." The District

[39] According to the District Court, 586 F.Supp. at 788, the Ringle, Hoover, and Fly memoranda were first cited and discussed in M. GRODZINS, AMERICANS BETRAYED: POLITICS AND THE JAPANESE EVACUATION 188-189, 291 & n. 50 (1949). *See also* 586 F.Supp. at 788 n.26 (collecting other works analyzing the evacuation program).

[40] Appellants dismiss these references as mere "secondary" sources. Reply brief of appellants at 6 n.6. Appellants, however, confuse the rules governing admissible evidence at trial and the rules determining when they were on notice of the factual basis of their claims. At the very least, the Grodzins book should have alerted appellants to the need to conduct further inquiries into the factual basis of their claims. And even assuming that the government had refused to disclose the Ringle, Hoover, and Fly memoranda before 1974, after 1974 and the passage of the Freedom of Information Act appellants would have experienced little difficulty in obtaining these documents.

Court credited this allegation, finding it consistent the undisputed historical material before it. 586 F. 787-788. But the District Court never considered the relevance of this allegation to the particular cau action pleaded by appellants in this case.

When the government impinges on property righ the midst of a military emergency, there is no compen taking under the Fifth Amendment. *United Stat Caltex, supra*, 344 U.S. at 154-156; *United Stat Pacific Railroad*, 120 U.S. 227, 234 (1887). In *Korem* and *Hirabayashi* the Supreme Court addressed the tion of military necessity as a justification for the ev tion program, albeit not in the context of a Ta Clause claim. In those cases the Court determined t must defer to the military judgment that it was i sible, as a practical matter, to segregate the loyal the disloyal. It is true that Ringle's analysis cont evidence undermining that conclusion. But the Cou not lack for evidence arguing against the military ment on this vital point. In *Korematsu* the Japa American Citizens League (JACL) had submitted a that raised substantial questions about the empirical of the claim of military necessity.[41] In the face of contrary evidence, however, the Court determined t must defer to the military judgment. *Korematsu* U.S. at 218-219, 223-224.

For the government to have concealed the factual of appellants' claims it would not merely have had t

[41] Thus the JACL brief included statements by the Att General and the Secretary of War in 1941-42 that there no appreciable fifth column activities by Japanese-Amer *see Korematsu*, Brief for JACL at 82; statements by dent Roosevelt that there had never been a serious of invasion of the West Coast, *id.* at 87; and referen Ringle's then anonymous article (signed "An Intelli Officer") stating that mass evacuations were not nece *id.* at 107-108.

ceal evidence suggesting the absence of a military emergency. In addition, *the concealed evidence would have had to be sufficient to rebut the presumption of deference to the military judgment articulated by the Supreme Court.* Given the constitutional underpinnings of the presumption of deference articulated by the Court, however, nothing less than an authoritative statement by one of the political branches, purporting to review the evidence when taken as a whole, could rebut the presumption articulated in *Korematsu.*[45]

Thus to have concealed evidence going to the very basis of the evacuee's Takings Clause claim, the government would have had to conceal *both* Ringle's report *and* the fact that there were no intelligence reports contradicting Ringle. Although appellants alleged this further a concealment in their complaint, *see* Complaint at 52 JA 58, the District Court did not discuss whethe undisputed historical material on which it based its ment contradicted this allegation. As noted previo however, nothing prevents us from looking at those historical documents to determine whether appell allegations retain any credibility.

Our reading of the CWRIC report suggests that a lants' allegation does have support in the historical ord.[46] At the very least, the CWRIC report suggests contemporary official intelligence analysis firmly opp a mass evacuation. *See* PERSONAL JUSTICE DENIED at 60. Moreover, both the CWRIC Report, *see id.*, and Burling and Ennis memoranda, *see Ennis I*, JA 115-1 J. Burling, *Memorandum for the Attorney General* (A 12, 1944), JA 119, indicate that this information available to the War Department and the Justice Dep ment at the time it prepared its *Hirabayashi* and *K matsu* briefs. Given the procedural posture of this c we must credit the allegations of appellants' compl unless they are specifically contradicted by the histor documents before the District Court. We therefore c clude that concealment has been alleged sufficient to the statute of limitations.[47]

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[45] Suppression of Ringle's analysis, without more, would not have tolled the statute. Ringle's report did provide specific facts supporting the practicality of individualized action. *Ringle Report* at 1-3, JA 91-93. But even Ringle's report could not provide anything more than incremental evidence against the government's case. Ringle did not purport to have access to all intelligence data on the issue. The Court therefore most probably would have assumed that the military had discounted this report in light of conflicting data received from other sources.

Suppression of the Fly and Hoover memoranda, and of the factual weakness of the *Final Report*, in the *Korematsu* brief would have had an even more attenuated effect on a putative Takings Clause claim. As already noted, the controversy over the *Korematsu* brief primarily focused on evidence tending to confirm *ex post* the initial military judgment, evidence of actual acts of espionage. The *Korematsu* and *Hirabayashi* decisions, however, focused on the reasonableness of the evacuation program when viewed *ex ante*. In both decisions the Court relied on the military judgment that it was impossible to segregate the loyal from the *potentially* disloyal in an efficient manner. Thus, although discrediting some aspect of the *Final Report* might have undercut the presumption of deference to some limited degree, it likely would not have changed the outcome in *Korematsu* or of a Takings Clause claim.

[46] We do not suggest that appellants' allegation has b established as a matter of fact. We merely review the gr of a motion on the pleadings as supplemented by histori documents. Should the District Court, on remand, find t the government *did* have countervailing intelligence da contrary to the finding of the CWRIC report, it would free to find that the statute of limitations was never tol in this case.

[47] We need not, and do not, pass on whether the concealme at issue violated any ethical obligation of the Solicitor Ge eral to the Court. As noted in *Hobson v. Wilson*, *supra* n 49, 737 F.2d at 42, it is not the law of this circuit that t concealment itself must be "wrongful." Moreover, the *Hobs* court held that even if, *arguendo*, concealment itself must

(b) *When the statute began to run.* The District Court found that the statute began to run when reference to the Ringle, Fly, and Hoover memoranda appeared in several books and articles. But just as we do not believe that the suppression of these materials, by itself, could have tolled the statute, we do not find that their disclosure could have started the running of the statute anew. None of these documents could have reversed the presumption of deference erected by the Supreme Court in *Korematsu*. Any court reviewing such documents would have concluded that it must defer to the judgment of the military authorities who often must be presumed to act on the basis of conflicting reports.

Not only would the *Ringle Report* have been discounted as a *partial* statement of the facts, but it could not pass as an *authoritative* statement of one of the political branches. The *Korematsu* and *Hirabayashi* Court grounded its deference to the "war-making branches' " special role in securing the national defense. *Hirabayashi*, 320 U.S. at 99. Consequently, only a statement by one of the political branches could have rebutted the presumption of deference.

Of course, there can be no question but that the publication of the *Ringle Report* should have put the evacuees on notice of the need to conduct further inquiries into possible claims they might have against the United States.[46] It is wholly possible that further inquiries would have uncovered the Ennis and Burling memoranda.[47] Nonetheless, even these memoranda would not likely hav fected appellants' legal rights. To be sure, these m randa indicate that responsible Justice Departmen ficials, who purported to have a wide view of the dence, had serious doubts about the military nec rationale. But that is all they represent. They pr one side of a heated debate within the Justice De ment, and between Justice and the War Departmen the appropriateness of the evacuation policy. They not be understood to be an authoritative statemen one of the political branches that there was reas doubt the basis of the military necessity rationale.

That statement came only in 1980 when Con passed the Act creating the Commission on Wartim location and Internment of Civilians (CWRIC). Pu 96-317, 94 Stat. 964 (July 31, 1980), *codified* U.S.C. App. § 1981 note (1982). Section 2(a) pro a brief statement of Findings and Purpose. It that the Act was passed because "no sufficient in has been made into [the internment]." Pub. L. 9 2(a)(3), 94 Stat. 964. This reference is elucidate the Act's legislative history. According to the H report, "[T]he committee found that no significant has been done by the Government to determine the e of any civil rights violations * * *." H.R. Rep. No. 96th Cong., 2d Sess. 5 (1980). The Senate report in stronger terms, finding that the "[i]nternees wer prived of their liberty and property apparently bas their ethnic origins alone." S. Rep. No. 751, 96th C 2d Sess. 2 (1980).

At a minimum, the Act can be understood to be mal statement that Congress no longer believed tha explanation provided by the military authorities fo internment program was adequate and that the should be reopened. Moreover, Congress took this fully cognizant of previous congressional and Sup Court approval of the legality of internment pro

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wrongful, the "wrongfulness" of a concealment can consist of the fact that the underlying government action—in this case a taking without just compensation—was wrongful.

[46] Indeed, the injuries suffered during the evacuation were probably sufficient to put appellants on inquiry notice.

[47] *But cf. Richards v. Mileski*, 662 F.2d 65, 71 (D.C. Cir. 1981) (a reasonably diligent plaintiff is not necessarily expected to exercise his rights under the Freedom of Information Act).

See H.R. Rep. No. 1146, 96th Cong., 2d Sess. 11 (1980) (reprinting the letter of the Assistant Attorney General detailing previous Supreme Court and congressional review of Executive Order 9066). In so doing Congress finally removed the presumption of deference to the judgment of the political branches.[47] With this step the statute of limitations began to run on appellants' Takings Clause claims.[48]

2. *The contract claims.* Although not barred by sovereign immunity, the statute of limitations was never tolled for appellants' contract claims. Unlike the "military emergency" doctrine of *United States v. Caltex, supra*, there is no analogous doctrine governing contract claims that suggests that "military necessity" is a defense to a contract claim.

[47] Appellee argues that an earlier statement by the Executive had the effect of ending the presumption of deference to the decision of the war-making branches. *See* Presidential Proclamation 4417, 12 Compilation of Presidential Documents 245 (1976). In that Proclamation President Ford finally repealed Executive Order 9066. In so doing he did state that Executive Order 9066 had been "mistake." *Id.* He did not suggest, however, that it had been a *legal* error. The Proclamation is therefore fairly read merely to state that although the military had the legal authority to act as it did, the course chosen was morally mistaken. Moreover, although President Ford did affirm the loyalty of the Japanese-Americans, *id.* at 246, he said nothing about the critical issue of whether it would have been practical to segregate the loyal from the disloyal in an efficient manner.

[48] Of course, it is possible to read the Act as merely stating that *Congress* no longer need be satisfied with the previous explanations for the internment and that Congress, with its power to create commissions with staffs and subpoena power, would now look into this issue anew. This argument, however, only suggests that Public Law 96-317, standing alone, could not produce a legal victory for any former evacuee who brought a claim. But this court has never suggested that claimants must have all of the evidence brought before them "on a silver platter" before the statute begins to run. Brief of appellee at 37.

It is true that when the United States has made ises to perform an "act of sovereign" no contra formed. *See United States v. Juda, supra*, 6 Ct. 454. But the mere fact that the government acts t ther the national defense does not bring its co within the "act of sovereign" doctrine. *See id.* at 45 (finding that the evacuation of the Bikini Islanders their homes to facilitate atomic tests did not cons an "act of sovereign"). Indeed, the "act of sover doctrine is only invoked where the government can that it never intended to form a contract but only s to distribute public benefits without binding obligat *See id.*

Thus there is no reason why appellants could not brought their contract claims in the 1940's. A jud determination that the government had acted pursua a military emergency would have had no effect on claims. Nor would it have affected their ability to a the "act of sovereign" defense. That defense would or fail, in 1945 or 1985, on whether the United S intended to undertake binding commitments to sp persons or whether it merely intended to distribute lic benefits. The existence *vel non* of a military e gency could have only the most attenuated influenc this issue.

The concealment of the lack of military necessity th fore did not have any legal effect on appellants' cont claims. Having failed to assert such claims within statutory period, they may not do so at this later d

VI. The American-Japanese Evacuation Claims A

A. *The Exclusivity of the Act*

Appellee argues that appellants' Takings Clause cla must fail because the American-Japanese Evacua Claims Act constituted an exclusive remedy for all cla arising out of the evacuation and internment progr

Brief of appellee at 43. Under *Brown v. GSA*, 425 U.S. 820 (1976), a statute is deemed to provide an exclusive remedy where three conditions are met: (1) the statute provides a detailed and complete scheme for adjudicating claims arising out of a particular subject matter; (2) Congress, rightly or wrongly, did not believe that the affected individuals had alternative remedies at the time it enacted the statute; and (3) the statute addresses a specific injury or issue while alternative remedies address a broader grievance. The Claims Act is obviously specifically tailored to the conditions of the evacuation program. The Act thereby fulfills the third of the *Brown* conditions. But the Claims Act fails to fulfill the first two of the conditions articulated in *Brown*.

First, the Act fails to provide a complete remedy for the losses sustained. As the District Court found, the Act tended to exclude claims for compensation that would have been compensable under the Takings Clause at the time the Act became law. *See* 586 F.Supp. at 785-786. For example, claimants were not paid for the interest that accrued between the time of the evacuation and the time their claims were paid. *Compare Claim of George M. Kawaguchi*, 1 Adjudications of the Attorney General 14, 19-20 (1956), *with Seaboard Air Line R. Co. v. United States*, 261 U.S. 299, 306 (1923).

Second, it is true that at the time the Claims Act was passed Congress did not think that the evacuees had any alternative remedies. *See* H.R. Rep. No. 732, 80th Cong., 2d Sess. 3 (1948). But this fact does not have the same legal meaning in our case that it had in *Brown*. *Brown* turned on the premise that Congress had assumed that the remedies provided by Section 717 of the Civil Rights Act and the government's waiver of sovereign immunity were coterminous. 425 U.S. at 827-828. Put otherwise, *Brown* presumed that the passage of Section 717 not only created new rights but also affirmed specific limits on the government's waiver of sovereign immunity.

In this case, however, Congress could hardly as
that sovereign immunity barred appellants' Ta
Clause claims. The Constitution itself provides fo
requisite waiver of sovereign immunity. Indeed,
congressional attempt to quash such claims might
be unconstitutional. Here congressional statements
the absence of alternative remedies merely constitu
recognition of the power of the military necessity de
not a specific limit to a waiver of sovereign immu

In sum, where Congress speaks of a lack of alterr
remedies in circumstances where it could not con
tionally limit a waiver of sovereign immunity, such
gressional observations do not imply that any
created rights must be exclusive of all other rem
We therefore do not believe that in passing the C
Act Congress sought to preclude appellants' Ta
Clause claims.

B. *Finality and Discharge*

Even though the Act did not provide for an excl
remedy, it did contain a provision suggesting that
evacuee brought a claim under its provisions he wou
barred from bringing subsequent claims concernin
evacuation and internment programs. Thus Section
(d) of the American-Japanese Evacuation Claims
50 U.S.C. App. § 1981 *et seq.* (1982), reads as fol

> [T]he payment of an award shall be final and
> clusive for all purposes, notwithstanding any
> provision of law to the contrary, and shall be
> discharge of the United States * * * with re
> to all claims arising out of the same subject m

The plain language of Section 1984(d) bars *all*
brought under the Takings Clause once an evacue
received an award under the Act.[*] The Claims Act

[*] It is true that Congress believed that the evacuee
no alternative remedies at the time it passed the C

therefore be read to force claimants to choose between attempting to receive the "bounty" provided by Congress under the Act or exercising their constitutional rights under the Fifth Amendment.

We are not unmindful of the hard choice to which Congress put the evacuees. By forcing them to choose between a ready administrative remedy and a costly lawsuit, Congress effectively forced the evacuees to settle for half a loaf rather than risk a fight for what the Constitution declares to be theirs by right. In so doing Congress acted on the outer perimeter of its authority. It did not, however, exceed its authority.[9] Nor are we unaware of the manner in which the Solicitor General's alleged wrongful concealment narrowed the evacuees' legal choices at that time. Nonetheless, it is apparent that the *congressional* offer was made in good faith and that the United States is not estopped from raising Section 1984(d).[10] We therefore reluctantly conclude that

Act. In enacting § 1984(d), however, Congress was guarding against future contingencies. Our analysis of the legislative history of the Claims Act thus does not undermine our reliance on the language of § 1984(d).

[9] We do not believe that § 1984(d) constituted an unconstitutional condition on the exercise of the evacuees' rights under the statute. Although as a general rule the government may not require individuals to waive constitutional rights as a precondition of receiving a bounty, *see Speiser v. Randall*, 357 U.S. 513, 518 (1958); *Frost Trucking Co. v. Railroad Comm'n*, 271 U.S. 583, 593 (1926), such conditions can be imposed where the right waived is rationally related to the benefit conferred. *See, e.g., Stephenson v. Binford*, 287 U.S. 251, 275 (1932). We are not prepared to say that the waiver of subsequent suits was so unrelated to the provision of an inexpensive and convenient procedure as to render § 1984(d) constitutionally infirm.

[10] Although the Supreme Court has yet to determine whether it is ever possible to estop the United States, the Court has stated that, at a minimum, affirmative misconduct

petitions for reconsideration of this harsh polic finality are properly addressed to Congress and n this court.

VII. Declaratory Relief

We reject appellants' independent declaratory cl Appellants argue that there is the danger they again be visited by racially motivated illegal governm actions. Reply brief of appellants at 21. Even assum *arguendo*, that there were a substantial probability such an unfortunate event, appellants would still not m met their burden under Article III. Our case law h that the mere fear of future governmental action tingent upon future discretionary decisions by polit officials does not provide a live case or controversy. *Halkin v. Helms*, 690 F.2d 977, 1009 (D.C. Cir. 198 Appellants also maintain that a declaratory judgm will remedy "present and ongoing psychic damage." Br of appellants at 56. Such psychic damage, howe standing alone, does not provide the requisite injury fact. *Cf. Laird v. Tatum*, 408 U.S. 1, 13-14 (197 (subjective effect on First Amendment rights does provide requisite case or controversy for declarat relief).

must be alleged and such misconduct must be directly sponsible for a detrimental change of position. *See Heckler Community Health Services of Crawford County, Inc.*, 1 S.Ct. 2218, 2224 (1984). In our case the government's re vant alleged affirmative misconduct occurred in 1942. A though the Solicitor General's action was plainly a contrib ting factor to the Supreme Court's decision, it also appea that Congress made an independent good faith decision 1948 to accept the facts as stated in *Korematsu*. Given th intervening good faith decision by Congress, appellants ha failed to allege an unbroken chain of causation between th government's misconduct in 1942 and the terms of the Clain Act in 1948. On these facts, estoppel will not lie against th United States.

VIII. Conclusion

The United States cannot be presumed to be ame
to suit. Fortunately, the Founders provided that the
to obtain just compensation for the taking on
property should remain inviolate. In so doing, th
doubt assumed that the normal statutes of limit
would apply. But they also most certainly assumed
the leaders of this Republic would act truthfully. I
main, history has proven the Founders correct. We
also learned, however, that extraordinary injustic
provoke extraordinary acts of concealment. Where
concealment is alleged it ill behooves the government
free people to evade an honest accounting. Should
concealment be proven here, those individuals who
not received awards under the Claims Act should be
to press this cause to its conclusion.

Affirmed in part and rev
and remanded in part.

HAMMOND DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	H Cr 83-07
	)	
ALLEN LEE BUCHTA,	)	
	)	
Defendant.	)	

The trial in the above-entitled matter was reconvened before HONORABLE JAMES T. MOODY, Judge of said court, and a Jury, at the Federal Building, 507 State Street, Hammond, Indiana, on the 28th day of June, 1983, commencing at the hour of 8:00 o'clock in the forenoon.

A P P E A R A N C E S :

MS. CAROL HUSUM,
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2045 Main
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Assistant United States Attorneys,
On behalf of the Government;

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MR. ALLEN LEE BUCHTA,
On behalf of the Defendant.

Defendant Present in Person.

SHARON BOLECK-RICHMOND
Official Court Reporter
U.S. District Court
Northern District Of Indiana
Hammond Division
Phone: (219) 932-5500

MARTIN BECKMAN,

called as a witness by the Defendant, being first duly sworn to testify the truth, the whole truth and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION BY

MR. SPIEGEL:

Q Would you please state your name for the record?

A I'm Martin Beckman.

Q And where are you from Mr. Beckman?

A Billings, Montana.

Q What is your business or occupation?

A At this point I'm a lecturer, author, producer of television specials, educational television.

Q What type -- what subject matter do you give these lectures on?

A Government, basically. Crash course in civics, explaining to the American people how our system works and functions.

Q Do these -- do your lectures or programs have anything to do with our income tax system?

A Yes, very much so.

Q Do your lectures concern the use of the English language?

A Yes, very much.

Q Okay. Now, with regard to use of the English language,

could you briefly describe or could you describe for the ladies and gentlemen of the jury what you tell people regarding use of the English language?

MR. MOROZ: Your Honor, I object on relevance.

THE COURT: Overruled.

We are to be a nation of law, and to have a nation of law you must have a law which governs the use of words. The law in this nation, of course, is written in English, and therefore you must have a strict discipline as to the use of words in the law. You dare not change the meaning of words because if you do, then you change the meaning of the law.

And, of course, the one thing that we point out very strongly is our tax, our income tax is to be a voluntary tax. If we had turned in an English assignment, and we had said that we were required to volunteer, our English teacher would have given us an "F" for the simple reason that the laws of grammar are very, very strict, and you do not use words such as "volunteer" and "required" in the same sentence. It is impossible.

And, of course, the difference between the words "wages" and "income," they are two different things. We work at a job for wages; we do not work at a job for income.

And they are two very, very distinct words with two very, very distinct meanings. And the law must be -- the law must pay attention. The law must be subject to the laws of grammar. To have a nation of law it is impossible to have a nation of law without a law governing the use of words. And we have, of course, seen so many, many violations --

THE COURT: Here, I don't know what the question is.

A -- of the laws of grammar.

THE COURT: Wait just a minute. He's gone well beyond the question. Ask the man questions instead of giving a narration.

MR. SPIEGEL: Your Honor, I asked him to describe to the jury what types of information he provides on the laws of grammar, what type of lecture he gives on the laws of grammar.

THE COURT: I don't know that that was the question. May I have the question, please?

MR. SPIEGEL: I believe that --

THE COURT: I think he's gone well beyond the question. Ask him another question.

MR. SPIEGEL:

Q Mr. Beckman, do you tell people anything regarding use of the English language and use of it with regard to the

Internal Revenue Code?

A Yes. We --

Q What do you tell them?

A I concentrate on the Internal Revenue Code because we feel that this is such a point that is a good place to start. And, of course, our tax law, they tell us that it is based on self-assessment, individual self-assessment and voluntary compliance.

And we use that as a starting point to, you know, bringing out the fact that they are violating the use of the word "voluntary," "required." And, of course, in the income tax, as it is administered today they are telling us that wages and income are the same thing.

And I'm firmly convinced this is a violation of the laws of grammar which is basically a very much higher law than laws written by the Congress, laws that are signed into the law by the President, laws that are

MR. MOROZ: Your Honor, again I'm going to object. He's rambling on and I think he's giving his opinion which is not within the limits of his testimony.

THE COURT: I think the question is "What do you tell people?" and "Tell us what you tell people."

A This is basically what I tell people in my lectures.

MR. SPIEGEL:

Q Let me ask you what do you tell them about the use of

the word "voluntary" in relation to the Internal Revenue Code and our tax system?

A Well, for the most part the I.R.S. is telling us that we are required to volunteer, and what I'm saying is that this is a violation of the laws of grammar. Very simple.

Wages and income are two different things, and if you have wages, then how can you be required to volunteer for an income tax?

Q Okay. When you say that there's a distinction made between wages and income, what do you mean by that?

A Well, it's two different words with two very distinct meanings, and if you have two distinct meanings, then it's a violation of the laws of grammar to try to make the term "income" inclusive and include wages.

It's a violation of the law of the grammar.

Q Now, what do you tell people with regard to voluntary compliance? Is that the same as saying to somebody "If you don't do it we are going to do it for you"?

A Well, the way they are administering it, of course, they are saying that you must volunteer this information which they are asking; that you must volunteer it. And so, when they say "you must," or "you're required," "you're compelled," then you have lost the meaning of the word "voluntary." The meaning of the word

"voluntary" means nothing at that point. This is just basic English.

Q Well, what does voluntary mean?

A No coercion, a free-will act without any outside influence. The individual makes his own personal decision without the influence, without the pressure, without the fear.

Q If someone were to say to you that you voluntarily comply with the law, is this a violation of the laws of grammar?

A No. No. If you wish to volunteer, and if you do so without any coercion, then that's your decision.

Q But if they tell you you voluntarily comply with the law and you're going to go to jail if you don't comply with the law, is that a violation of the laws of grammar?

A Absolutely.

Q Why?

A For the simple reason that you can not be required to volunteer. One word or the other is out of place.

Q Now, do you give -- do you give any lectures on the use of the word "incur" or "incurred" in the Internal Revenue Code

A We bring it out and we mention it.

Q What do you mention with regard to that word?

A Well, of course, we don't get into that aspect of it so

much because we concentrate on the voluntary aspect. And, of course, we have gone further than that in that we have all of the documentation on the Sixteenth Amendment and the fraud involved in the Sixteenth Amendment.

And any more we don't talk about inferring. We talk about the fact that the entire I.R.S. code is based upon an ammendment that was never ratified by the States.

Q When you say the Sixteenth Amendment, what does that amendment provide? Do you know?

A It supposedly gives the Congress the power to put an income tax on the backs of the American taxpayers.

Q Now, when you say that there's fraud with regard to the Sixteenth Amendment, what do you mean by that?

MR. MOROZ: Again, I'm going to object. It's what he tells the people, not what he thinks or his opinion is. I object.

MR. SPIEGEL: Well, I'll rephrase the question.

Q What do you tell the people with regard to fraud and ratification of the Sixteenth Amendment?

A Well, we went to the states, the 48 states, and we got the legislative journals from the 48 states and how the state legislators acted on the Sixteenth Amendment.

And we found that the Proclamation by the Secretary of State in February of 1913 was a total error, that we did not have 36 states that ratified the Sixteenth Amendment. Missed it by many, many states.

There's probably less than ten states that actually ratified, and there was supposed to have been 36.

And since that point, since we have gotten that information, that's this file right here, all 48 states, we have not concentrated so much on the violations of the laws of grammar and the meaning of words as much as we have concentrated on the fact that we have a situation where we have a tremendous mistake or as most of us are convinced, a case of fraud perpetrated upon the American people.

And our entire effort at this point is focused on getting this information out to the American people. There is a television special being produced for broadcasting in this country on this story that is here.

Q Can you give us some examples of what you mean by fraud with regard to ratification of the Sixteenth Amendment?

A Well, the State of Kentucky is a very vivid picture. The Proclamation by the Secretary of State indicates that Kentucky is one of the states that ratified it.

The said document 240 which is the official

canvass of the votes of the states indicates that Kentucky ratified. They are counted -- Kentucky is counted but -- the Senate journal from the State of Kentucky tells us an entirely different story.

The vote was 17 to 17 in the Kentucky Senate. The president of the Senate voted a "nay" vote and the vote ended up 18 to 17 against ratification of the Sixteenth Amendment.

And it's there for all to see. The documents are very, very clear. There is no question about it, and the State of Kentucky did not ratify, but they are counted in both the Proclamation by the Secretary of State, and they are counted in Senate document 240, the official canvass.

Q Are you saying that the Secretary of State of the United States told the American people that the State of Kentucky ratified the Sixteenth Amendment when in fact the State of Kentucky rejected the Sixteenth Amendment?

A Absolutely. He said in his Proclamation, he said, "It appears as though it has been ratified." He did not come out and say it bluntly that it had been ratified.

Q Are there other examples?

A Yes. California. The state -- the Senate in California acted on it, and they amended the amendment. A number of states did that.

California, the State of California, made about five fatal mistakes. They did not record the vote. The votes of the individual senators was not recorded. They amended -- they passed an amended version and, of course, when they pass an amended version that wiped them out completely.

Q Why did that wipe them out completely?

A Because they did not pass the amendment as it came down from the Congress.

They are not the only state. A number of states amended the amendment before they would pass it, changed the language.

Q And what is the effect of amending the amendment and then ratifing it?

A Well, if they want to ammend it and if they want to send it back to the Congress and let the Congress act on it and accept their amendment, and then go back to all the states again, that's fine, but they did not follow that procedure.

Q Now, do you know without referring to those documents approximately how many states did not actually ratify the Sixteenth Amendment?

A Well, we're having some research firms that are working on this. Some of the states only made one or two mistakes. Most of the states -- almost all of the 48

suspended their rules.

Most of you are aware that in the state legislature a bill must be read three times on three different days. Almost all of the states are that way.

State after state they would suspend the rules and they would read it all in one day and just basically violate their own state Constitutions and their own state laws.

And this is -- this just goes all the way through it.

Quite a number of the states, like I say, didn't record the vote. They have a vote count that says that it may have been ratified, but they don't have the names of the individual legislators which should have been there.

Now these are technicalities that different research firms are going to take a different view on, but there is no question that we did not count anywhere near 36 states as required by law. We are supposed to be a nation of law, and these people are supposed to obey the law when they pass an amendment to the Constitution. And they didn't do it.

Q What is the effect of the Sixth Amendment not being properly ratified on our tax system?

A Well, it has created havoc on the American people

because we now have a fear that permeates our society. Our people are afraid of the tax collecter, and we are living in this fear situation, and the Declaration of Independence said, "deriving their just powers from the consent of the governed."

And we are asking the question "Is fear a just power in this country." Is it just? I don't believe it is.

Q I believe I misspoke. My question was in regard to the Sixteenth Amendment. Was that your understanding of my question? That was the Sixteenth?

A Would you restate it again? I'm sorry.

Q My question was what is the effect of the improper ratification of the Sixteenth Amendment on the legality of our income tax system?

A Well, as I said, it's been a disaster, I guess, and it has created a monster in this country. And I basically believe that we have been laboring under a very unconstitutional tax.

I think that our Government has enough ways of collecting revenue without an income tax because we got along very well for 136 years without an income tax. And so, I think that we have suffered under something that is entirely false based upon a false premise.

Q Now, when you say that people fear the tax collecter, do

you mean people fear the Internal Revenue Service?

A Definitely.

Q Now, what were you telling people in '77 through 1980 regarding fear of the I.R.S.?

A Well, basically we are very philosophical in what we say in that we are very concerned about this nation. Great nations are never destroyed without. They are always destroyed from within.

I think this is our greatest fear. When I went in the service I took an oath to uphold the Constitution and defend this country against all enemies, foreign and domestic. So we approach it from a very philosopical viewpoint that we want to be free.

And my generation, I have a responsibility because I love my country; I love my family; I love my grandkids. And I would very much like to pass on to my children and my children's children a free and orderly society.

And I think that if we continue on the present trend we were supposed to have a representative Government. We don't have a representative Government today. It's not working, and I think that we have to get very much involved in the process.

Of course, taxes are political. Taxes are political. They are politics. And we dare not tamper.

We dare not let our Government tamper with the political process in this nation. I don't know if I answered your question or not. I --

Q Yes, I think you did.

Now, getting back to the law of grammar for a moment, have you examined or ever examined Section 61 of the Internal Revenue Code and its purported definition of gross income?

A I haven't for sometime and, of course, I find it very interesting on the 1040 form how that they want you to list the money that you have coming in and they say income and wages and tips, and et cetera. And, of course, there is another one of the violations. It's an open ended contract.

When people fill that in and then put their name on the bottom and sign that under penalty of perjury, they are taking an awful risk for the simple reason they have signed something under the perjury thing, and they have actually just given public servants all the room in the world to create difficulty because of that "et cetera."

What does "et cetera" mean? It means and so forth. And so when you fill that out, it is not specific. And you should never sign a contract that is not specific.

This is not very intelligent if you sign that kind of thing and as open ended as it is.

MR. SPIEGEL: Your Honor, can I have a moment?

Q Mr. Beckman, do you recall anything else concerning the stack of materials there regarding ratification of the Sixteenth Amendment that you have not previously testified to?

A Well, I just -- all I would say is that it's mind boggling. It's a little scary. It's very scary, really. I had coffee with one of our Assistant U.S. attorneys in Montana a couple weeks ago. And I showed this young lady, a very capable attorney, I showed her some of these documents.

MR. MOROZ: Your Honor, I'm going to object to this question -- this answer.

THE COURT: Sustained.

MR. SPIEGEL: Your Honor, for the record --

MR. MOROZ: It's totally irrelevant.

MR. SPIEGEL: I object to Government counsel interrupting the witness when he is answering the question.

THE COURT: I don't think he's answering the question.

MR. SPIEGEL:

Q Had you discussed the Sixth (sic.) Amendment materials

with any attorneys for the Government?

A Yes.

Q When?

A Several times. And the incident I'm just talking about, Lorraine Galliger is handling --

MR. MOROZ: Your Honor, I am going to object to the relevancy of his talking to this U.S. Attorney in Montana or wherever. He is giving another opinion of -- not what he's telling people.

MR. SPIEGEL: For the record, I again object to counsel for the Government interrupting the witness in the middle of his answer.

THE COURT: Well, he's supposed to be testifying as to what he lectures on and what he writes about, and this question doesn't get into that area.

MR. SPIEGEL: Well, the question is based upon I'm trying to find out if he's discussed it with any attorneys. This man is not an attorney.

THE COURT: I'm going to sustain the Government's objection. Ask another question.

MR. SPIEGEL: On what basis?

THE COURT: Ask another question.

MR. SPIEGEL:

Q What do you tell people -- what else do you tell people regarding Sixth Amendment -- Sixteenth Amendment

ratification process?

A Well, most people when they are confronted with this, they are appalled. And like I said, it's a little scary. It's scary for me. We also have the information here on the Seventeenth Amendment to the Constitution.

It was not ratified either properly. It's all in one file. And it's -- it's frightening because we always trusted our Government. We paid our taxes because we felt it was our responsibility. We went to war. And we did a lot of things for our country.

And then when we find that our country, our tax consuming public servants too many times have betrayed us, and I tell people this. I say, "I want to challenge you." I challenge the U.S. Attorney in Montana. And I challenge people all over this country. I challenged a Federal Court in Fort Worth, Texas a couple months ago.

I say this: Most of us are very much aware that our public servants lied to us about Pearl Harbor. They didn't tell us the truth about Korea, and that was my war. I was there. I know all about that war.

They murdered, I believe, 57,000, over 57,000 of our best young men in Vietnam.

They didn't tell us the truth, all the truth about Watergate. They didn't tell us all the truth about the Kennedy assassination, and they didn't tell us the truth

about Social Security.

And they didn't tell us all the truth about the energy shortage. And I would challenge everybody and I do this ever place I lecture and every place I speak. I challenge anybody, "Tell me where they have told us the truth."

Q Now, when you say they have lied about Pearl Harbor, what do you mean?

MR. MOROZ: Your Honor, I'm going to object to the relevancy of Pearl Harbor.

THE COURT: I don't see its relevance.

MR. SPIEGEL: Your Honor, he's explaining his answer, that's all.

THE COURT: I'll sustain the objection.

MR. SPIEGEL: Your Honor, for the record we have marked as Defendant Exhibit E for identification, the Sixteenth Amendment materials, and we at this time would move they be admitted into evidence.

THE COURT: Have you shown them to the Government counsel?

MR. SPIEGEL: While they are examining them --

MR. MOROZ: Your Honor, we want to examine this evidence and we want to listen to the questions.

THE COURT: Fine.

MR. MOROZ: Thank you.

MR. SPIEGEL: Your Honor, can I confer with the witness while they are examining that?

THE COURT: (Nods.)

MR. SPIEGEL: Okay.

(Government counsel looking at documents.)

THE COURT: While they are examining these documents, we will take a short recess. I'll send you back to the jury room and we'll call you when they are done examining the documents.

Remember the admonition I've given you throughout the trial. Don't discuss the case among yourselves. Don't form or express an opinion on it.

(Jury exits.)

THE COURT: Mr. Spiegel, do you have any more documents like the ones you've just handed which is about five inches thick? Do you have any more documents that they can review now?

MR. SPIEGEL: Born Again Republic, the book the Defendant testified --

THE COURT: Hand over all the Exhibits so they can examine them. Do it now and every other Exhibit that you've got that you're going to attempt to introduce through this witness.

Let me know when they are ready to go.

(Short recess.)

(The trial was resumed out of the presence and hearing of the jury and the following proceedings were had, reported as follows:)

CLERK: All rise.

THE COURT: Counsel for the Government examined all of these Exhibits that are --

MR. MOROZ: Yes, Your Honor. I would like to ask the witness several questions concerning the documents.

THE COURT: On Voir Dire?

MR. MOROZ: Yes.

THE COURT: For purposes of proposing an objection?

MR. MOROZ: Yes, for purposes of admissibility.

THE COURT: All right.

VOIR DIRE EXAMINATION BY

MR. MOROZ:

Q Now, the top sheet where it's marked Government's Exhibit, that's not a public document, is it?

A No, it is a brief summary, a very, very brief summary of what you'll find in the documents.

Q Okay. So that was prepared by yourself?

A No.

Q Who was it prepared by?

A By the Montana, Wyoming Historians.

Q All the other documents in there, are they under Government seal?

A No.

Q Are they certified copies?

A No.

Q They are just copies that were Xeroxed by some person?

A People in each state library.

Q Do you know individually each one of those persons?

A No, I don't.

Q Do you know if they got the complete records?

A I have reason to believe, yes.

THE COURT: Do you know of your own knowledge they have the complete records?

A No. Well, because like I say, it was the Montana, Wyoming Historians that assembled the information.

MR. MOROZ:

Q Also those records contain underlining and brackets, correct?

A To my knowledge, yes.

Q Penciled in comments?

A Very little comments. Most of it is just documents.

Q Underlining?

A The underlining, of course, is there to help those who view it.

Q Did you personally place those --

A No.

Q -- underlines at the society?

A No.

Q As you said it took about three years to compile this information, correct?

A Well, over a period of about three years it was accumulated.

Q When was it completed?

A Oh, just about four, five months ago, I think.

Q Did you show that material or give that material to Mr. Buchta in 1978, '79 or 1980?

A No. No. We had our suspicions, you know, way back then but that's why we went through all of this process.

Q And it's just really been compiled by yourself?

A No, not by myself.

Q By your other people?

A Yes.

MR. MOROZ: Again, at this time we would object for several reasons.

One is relevance.

Two, there's no authenticity. Those are not under seal. There's been no foundation laid for the proper admission. They contain the opinions, emphasis, underlining of other people, and the top sheet is just a

computation that somebody themselves made.

And again it doesn't go to relevancy.

Mr. Buchta's evidence was -- Mr. Beckman's testimony was admitted to show Mr. Buchta's frame of mind. None of that was shown to Mr. Buchta in the relevant years in this case. We object to its admission.

THE COURT: Under what rule of evidence can this be admitted in? All of the reasons stated by the Government are very sound.

MR. SPIEGEL: Let me deal with the relevance.

THE COURT: No. Let's deal with what rule of evidence. I'm not so concerned about the relevance at this stage. I am concerned with it. I want to know under what rule of evidence you think that can go into evidence. Point it out. Name me a rule. It's hearsay. There has to be an exception.

MR. SPIEGEL: Your Honor has previously admitted unauthenticated copies the Government wanted to use in their case in chief.

THE COURT: Which ones?

MR. SPIEGEL: The ones that we spent all day yesterday sweating over.

THE COURT: They spent all day yesterday laying a foundation for authenticity. I don't

understand what you're saying there.

MR. SPIEGEL: Let me ask him a few questions on foundation.

THE COURT: There is no foundation for these documents. They are not self-authenticating. He's testified to that. Are they copies of public documents?

MR. SPIEGEL: Yes, they are.

THE COURT: You have to have the keeper of the records here to get them in or they have to be having a seal on them that shows that they are self-authenticating. Other than that you're not going to get them in. Period. Do you have either of those things?

MR. SPIEGEL: I have a rule of evidence.

THE COURT: Let me -- which one is it? Tell me. Please.

MR. SPIEGEL: Tab 4, Rule 201, judicial notice. We are asking you to take judicial notice of copies of public records, and under the rule of evidence under Rule 201 if the facts are subject to verification, which they are, and if they are tendered to the Court, and someone in the party asks for judicial notice to be taken, then it's in the Court's discretion.

THE COURT: I will not take judicial notice of that Exhibit.

Now, do you have another rule?

MR. SPIEGEL: Well, I think if you clarify for the record what you're not taking judicial notice of --

THE COURT: That Exhibit and the documents contained in that Exhibit. That's what you're asking.

MR. SPIEGEL: Your Honor is refusing to take judicial notice of the underlying documents on the ratification process of the Sixteenth Amendment, is that correct?

THE COURT: As express in that document which is unverified, not authenticated. That's true.

MR. SPIEGEL: Can I ask the witness if he can verify the origin of the copies?

THE COURT: Did he do it himself? He's testified he didn't.

MR. SPIEGEL: Well, can I ask him several questions?

THE COURT: Certainly.

MR. SPIEGEL: Thank you.

Q Mr. Beckman, do you know who prepared those copies?

A Yes.

Q Who prepared those copies?

A Well, there's a gentleman by the name of Sam Bits at Havre, Montana; a fellow by the name of Dean Hirsch from Powell, Wyoming; a fellow by the name of Wally Peterson

from Glasgow, Montana, and a fellow from Malta, Montana by the name of Neil Waters. These are the four men who did most of the work. There was a lot of other people involved, of course.

Q Now, do you know how they obtained the copies of the official records that they purport to represent?

A They just had a tremendous amount of correspondence between the state -- them and the states, the state legislators, the keepers of the records. Some of them, of course, went to some of the state capitols and researched themselves in these libraries.

Q Is it your testimony that these are copies of the official records from the states that they purport to represent?

A Yes. I think they are as official as you are going to find.

Q Why do you say that?

A Well, I say that because these people are people of integrity. They are people of substance, and they are people who share my concern and the certain of a lot of other people for this nation.

And, of course, the strange thing about it is that you aren't going to be able to find, I don't think, a set of documents that the Government has to prove that it was ratified. They don't have them.

In other words, people inside of the Government, U.S. attorneys, judges, I.R.S. people, have all been going by what they believe and not by what they know.

And this makes a tremendous difference because when you go by what you believe you are no longer a nation of law.

You are a nation of men. And unless the Government --

THE COURT: Here. Let's get back to the issue that's at hand. Ask him another question. You are trying to authenticate a document. You have yet to do it.

MR. SPIEGEL:

Q Now, do you know what the chain of custody is from the time those documents were copied from the original documents to the time that they arrived in your hand?

THE COURT: Of your own personal knowledge.

A Of my own person knowledge, most of it was assembled by Dean Hirsch of Powell, Wyoming.

THE COURT: Did you see him assemble it?

A I was involved in a certain extent --

THE COURT: Did you see them do the work that they did and have it in their hands at all time?

A No.

THE COURT: Chain of custody is not going to

do it.

MR. SPIEGEL:

Q Have you examined the original documents?

A No. The amount of correspondence is tremendous because

THE COURT: That's --

A -- a number of states didn't want to cooperate.

THE COURT: You've answered the question.

MR. SPIEGEL:

Q Have you corresponded with state officials regarding the documents?

A Not myself.

Q Have you seen the correspondence between -- was it the Montana, Wyoming Historical Society?

A It's not the historical society. They just call themselves the Montana, Wyoming Historians. I have seen a lot of them. I've read a lot of it.

Q Based upon your review of that correspondence, are those accurate copies of the records?

A Yes. I am convinced they are very accurate. If we were just talking about one or two states, you know, the difference, it would be entirely different, but what we are seeing is a tremendous number of states that are reported as having ratified, did not.

MR. SPIEGEL: Well, Your Honor I would again move for their admission on the basis of --

THE COURT: Under what rule?

MR. SPIEGEL: Pardon me?

THE COURT: Under what rule of evidence?

MR. SPIEGEL: I would ask that you take judicial notice of them.

THE COURT: I told you I will not.

MR. SPIEGEL: We are tendering these to you and asking you to take judicial notice, and you are denying --

THE COURT: Request denied. If you have another basis for their admission, tell me about it. Show me the rule other than judicial notice.

MR. SPIEGEL: Could I have a moment?

THE COURT: You've had about 10.

MR. SPIEGEL: Okay. I guess we can't use them then, Your Honor.

THE COURT: Unless you can show me a rule of evidence that says they are admissible other than judicial notice.

You have nothing further?

MR. SPIEGEL: No, Your Honor. For the record we object to your not taking judicial notice of them because of the foundation laid.

THE COURT: There's no proper foundation laid for it.

MR. MOROZ: Your Honor, I also --

THE COURT: The objection is sustained. What is that Exhibit letter?

MR. SPIEGEL: E.

THE COURT: E is not admitted.

MR. MOROZ: Excuse me, Your Honor. I believe Mr. Spiegel is also planning to introduce Exhibits G and H. Again these are two books written by the witness, but they are written in 1981 and 1983. And again we would object to their admissions again because they do not go to the knowledge --

THE COURT: This man is testifying to this Defendant's state of mind at the time he -- back in what, 1978, '79, and I guess '80. Is that right?

MR. MOROZ: Correct.

THE COURT: And those were both written in '81?

MR. MOROZ: '81 and '83, Your Honor.

THE COURT: You may be able to get them in if you can testify that the contents of those books were what he lectured on in all those years. I don't know.

MR. SPIEGEL:

Q Were they?

A Let me see the top one there, "Do Unto The I.R.S. As They Would Do Unto You."

MR. SPIEGEL: Does Your Honor then want this for the record?

THE COURT: The clerk does.

A This was printed in 1977, and it was in all of the Justice Times just about every --

THE COURT: Are you testifying, sir?

A No, I'm just pointing out --

THE COURT: Ask him a question.

MR. SPIEGEL:

Q Are parts of the book, "Do Unto the I.R.S. as They Do Unto You," in fact reprints of things published prior to 1981?

A '83 on that one, yes. Yes.

Q 1983. And isn't it true that the flier "We Can Bring Honest Government Back" was printed in August of 1977?

A Right.

Q And are there other items in here that were published in 1977 through 1981?

A That one there, "We Can Bring Honest Government Back" is the oldest one in there. That goes back to August of '77.

THE COURT: You're saying the content of that document which is Exhibit what?

MR. SPIEGEL: H, Your Honor.

THE COURT: Exhibit H was used in your

lectures and the dissemination of information that you gave in your lectures in the years 1978, '79 and '80? Is that what you're saying?

A Going back all the way to '76.

THE COURT: Listen to me. Let me finish before you start to talk. You didn't answer my question. Can you do that?

A I'll try.

THE COURT: Good.

I forgot what the question was.

MR. SPIEGEL: Here, Your Honor, it says first printed in '77.

THE COURT: I want my question. Would you read my question back? You listen closely and just answer the question only.

(Question read.)

A Yes.

THE COURT: What about the other Exhibits?

A Same.

THE COURT: If I ask you the same question as it pertains to Exhibit, what 12?

MR. SPIEGEL: G, Your Honor.

THE COURT: Exhibit G.

A Yes.

THE COURT: Would your answer be precisely the

same?

A Absolutely.

MR. MOROZ: All right. Your Honor, I still put my objection in because there's no showing that the Defendant read these books when he was committing the alleged criminal acts.

THE COURT: It's going to be overruled. I'll admit it.

(Whereupon, documents previously marked Defendant's Exhibits G were admitted in evidence.)

MR. MOROZ: I also have an objection to Defendant's Exhibit which purports to be the Declaration of the Independence, the Constitution of the United States, and the Bill of Rights. I think it is the Court's duty to instruct the jury on the law, not to give the jury a pamphlet.

THE COURT: What is that, a statement as to what the law is?

MR. SPIEGEL: It's a reprint, Your Honor, that was disseminated by this witness in giving his lectures. Would Your Honor like to look at it?

THE COURT: I'm not sure on that.

You disseminated that in all your lectures?

What Exhibit was it?

MR. MOROZ: Exhibit F, Defendant's.

EXAMINATION BY

THE COURT:

Q And that item was used in 1978, '79 and '80?

A Yes.

Q In all of your lectures?

A Yes.

Q Disseminated to the people that listened to you?

A Right. Yes.

THE COURT: Well, I'll admit it. Objection is overruled. So, I have admitted -- give me the letters.

CLERK: F, G and H.

THE COURT: F, G and H.

MR. SPIEGEL: Thank you, Your Honor.

THE COURT: You're welcome, but you don't have to thank me, sir.

Any other Exhibits that we can handle right now?

(Whereupon, documents previously marked Defendant's Exhibits F and H were admitted in evidence.)

MR. MOROZ: No, Your Honor.

MR. SPIEGEL: Well --

MR. MOROZ: I should ask, is this poster going to be used also?

MR. SPIEGEL: No. We are not going to use the poster, but the witness is going to draw on the blackboard what he would do at his seminar, the diagram

he would make.

THE COURT: Any other Exhibits?

MR. SPIEGEL: No, Your Honor.

THE COURT: Would you call the jury, please?

(Jury enters.)

THE COURT: There's no need for the audience to stand.

What are the letters of those three Exhibits again?

MR. SPIEGEL: Your Honor, the letters are Defendant's Exhibit F, G, and H.

THE COURT: Ladies and gentlemen, during the recess where I was here alone without you, I have admitted over the objection of the Government Defendant's Exhibit F, G, and H.

CONTINUED DIRECT EXAMINATION BY

MR. SPIEGEL:

Q Now, Mr. Beckman, you're known by the name, Red, are you not?

A Yes.

Q Is it all right if I refer to you as Red in this questioning?

A Yes.

Q Now, Red, you use the phrase tax consuming public servants. What did you tell people in your seminars

that phrase meant, and what do you mean by tax consuming public servants?

A Those who work for Government are basically tax consumers. Some call say, tax users. We use the word tax consumer as one who is working for the Government in one capacity or another.

Q Now, did you give seminars that could be considered seminars on civics --

A Yes.

Q -- during the years 1977 through --

A Yes.

Q -- '81.

What basically did you tell people in your seminars on civics?

A Well, basically, I believe that -- and I tell people that unless we, the people, regain control of the Government, our Government will destroy us.

I love my country, and I at this point don't trust my Government. And what I'm saying in all my lectures and in my books is that we, the people, must regain control.

Our representative form of Government is no longer working because we elect politicians who promise us tax cuts and balance budgets, and we get more taxes and we get more deficits, higher deficits. And 65 percent of

the people don't even go to the polls any more because they are tired of having their vote stolen when they go to the polls on election day.

And we have to somehow regain control of those who are creating our statutes and our laws in this country. We have to put the control back in the hands of the people, otherwise we are going to destroy ourselves like every other great nation has in history.

Q Do you tell people in your civic seminars how we, the people, can regain control of this country?

A Yes.

Q How do you tell them that can be done?

A Well, I wrote the two books not because I like to write, and I didn't think I was an author, but I wrote the two books because there were so many books telling us about the problems.

And no one was really giving us solutions. And basically I'm very solution oriented. I want to know what kind of a solution we can come up with to solve our problems.

And, so basically my lectures are very, very positive.

I don't like the negative. And the only time that I define the problems in this country is so that we can have a starting point to come up with a solution to the

problems that confront us.

And so, my lectures are always very, very positive in that regard.

Q Do you use any kind of diagrams in the course of these lectures?

A I always use a blackboard or an overhead projector, and, of course, many times we run our television specials on closed circuit television. This type of thing. We have produced about eight or ten hours of educational television.

We have been in over 28 states with that on commercial television, time that we have bought.

But I use video -- or visual aids all the time.

Q What type of diagrams would you use the blackboard for? Can you draw us a typical diagram that you would have drawn at one of these seminars? Let me move this easel for you.

A Basically -- basically I teach that we want an orderly society. This is our heart's desire. This is what we would like to have an orderly society. And this is why government's are ordained and why government's are established.

Now, I like to talk about the chain of command. In the military about the first thing they taught us was that there was chain of command, and I as a private on

the bottom, I didn't have any authority. And the people above me, the Corporal and on up, they were the ones that told me what to do.

And they brought us into a classroom. We didn't know how to march or anything else. And they taught us the chain of command.

They said the general is at the top, and you got colonel, and the lieutenant colonel, and the major, and the captain and on down. This is how you have a discipline in the army is by knowing who is in authority.

I believe in an orderly society you have got to have a comprehension of who is in charge, and who has the authority over the others.

Now, at the top I put God and God's law really because God's law governs God himself. He does not violate his own laws. He adheres to his own laws. And so, I put him at the top because I believe he's the final authority. Right underneath that I put the laws of common sense.

I believe that common sense tells us that an orderly society -- the primary ingredients of an orderly society are justice, truth, morality.

I'm not too good on the blackboard. Morality and et cetera. Respect for human life. Honesty.

Integrity. These are the rules and the laws which we function under in our everyday relationships, one with another.

We trust those who tell the truth. And we don't trust those who don't tell the truth. We dare not trust those because those who do not tell the truth are a problem. If you want to create an orderly society, it doesn't work too well.

Neighbors, if you can't trust your neighbor you can't neighbor with him. You have to have people who you can trust.

Now, right under that I put the laws of grammar.

Basically, what this is is a discipline of language. I call these the higher laws. And underneath that I put the people because at our level we are basically governed by the higher laws.

I say that we have three votes in our system. We have a vote on election day. And I say that we try our best to go to the polls and pick the best that are there on that ballot.

And as I said earlier, these people -- they promise us tax cuts; they promise us balanced budgets. And we go to the polls and we vote for balanced budgets and lower taxes, and we get higher taxes and we get larger deficits invariably.

It's been happening for at least 50 years. This is your vote number one.

Your vote number two is over here. The Grand Jury. 23 registered voters are called. And they are registered voters because they vote.

Over here, this is vote number two. Now, we got a jury over here. This is your vote number three.

Now, I should have put a dotted line here. Ordinarily I put a dotted line across here, and I put a solid line across here. And that represents the Constitution of the United States.

We, the people, are above the Constitution. We are not under the Constitution. We are not bound by the Constitution. Only when we become a tax consumer and take an oath to uphold and defend the Constitution of the United States, only then do we step below that line and take a lower position in our system.

What have we got underneath the Constitution of the United States? We got the executive branch of Government. We've got the legislative and the judicial.

Now, remember the chain of command in the military; the general, the colonel, and the lieutenant colonel. Basically what we have here is the chain of command right from the top on down. When a person runs for the Presidency of the United States of America, they

start here. And when they win that election, they have to step down and take the position of a public servant. They are no longer above the people. They are below the people. All of them. Everyone of them. The Congressman, the senators, the judges, all of them take a position as a public servant. The chain of command. Don't ever forget it.

Now, when we went to that Government school, they taught us that we had a system of checks and balances.

They said we have a system of checks and balances right within the legislative branch of Government.

How do we arrive at that? These people in the House are to represent the majority because the population of the nation proportionally and these people represent the majority in this nation. But you see, we have a lot of minorities.

At some time or another, everyone is in a minority, and very very seldom are we in a majority. Almost without exception everyone is in a minority in one respect or another.

The Senate was to be a check against the House, and the House was to be a check against the Senate. The majority was to be a check against the minority and the minority was a check against the majority.

They said "Branches of Government". Why branches

of Government? They said we are going to have separate powers. We are going to put a barrier between these branches of Government. Separate powers. We are going to give the legislative branch of Government the right to write law. We gave them a separate power. We did not give them general powers. We limited their powers.

The only source of legitimate power that your legislative branch of Government has is Article I of the United States Constitution.

You see, our Founding Father's, when they went to Independence Hall in Philadalphia, and when they set down there to form a government, they did not form our government. They wrote a law, the Constitution of the United States, and then the Constitution is what created your government.

Those Founding Father's, those delegates from 13 colonies, did not form a Government. In Article I is the only source of legitimate power for the legislative branch of Government. Article II, a separate power was given to the Executive branch of Government. The only source of legitimate power for the Executive branch of power is Article II of the United States' Constitution. The only source of legitimate power for the judicial branch of Government is Article III of the Constitution.

Now, the Constitution is a perfect document for

one reason. They put in there a law which was written to govern how it itself was to be changed. They didn't say it was set in stone. They didn't say that the thing is perfect. No. They didn't do that. They wrote Article IV of the Constitution, and they specifically defined how the Constitution of the United States can be changed.

And that makes it a perfect document in my book for the simple reason that right within its own pages and its own works it tells you how it is to be changed.

Very, very, very clearly.

Now, these people here in these two branches here. The executive branch -- the President is voted. He is elected for a four year term. The people in the House, they are elected for two years. All 435 members of the House. Every two years they have to go back to the people and get people to agree or disagree with how they performed. These people, of course, they get six year terms and every two years, one-third about of the Senate is up for re-election.

Now, if these people in your legislative branch of government and if your President, if they do not live up to their campaign promises, if they don't do what they promise, then the representative government is not working, is it? It is not going to work.

If you vote for lower taxes, if you vote for balanced budgets, et cetera, and you get the opposite, then your representative form of Government is not working.

Now, the question is what kind of law are these kind of politicians going to write?

Now, I think most of us are aware that we have got people with political philosophies that are contrary to the intent of those who wrote the Constitution of the United States.

Now, if they have a contrary point of view, the way to change the Constitution is not by law written the way they are writing it or not by judicial decisions or by executive orders, but they are to go to Article V of the Constitution and do exactly as the law prescribes.

But they haven't been doing that.

Now, what kind of law? If you've got someone with a socialist or a communist political philosophy, and if they run as a Democrat or a Republican, and they win office because they have promised tax cuts and balanced budgets, what kind of laws are these people going to write? It's scary.

What kind of law do we have produced by these people underneath the Constitution who are bound by the Constitution? Case and statute law.

Remember the chain of command from top to bottom. That's like your private in the army that doesn't know anything. And the reason is this. You see, suppose that the I.R.S. does not agree with my political philosophy, and they say, "We want to indict Mr. Beckman for a violation of the I.R.S. code under case and statute law," which is down here.

Now you see, the Fifth Amendment to the United States Constitution, the very first clause, it says that before they can indict me, and I'm up here, Mister A, before they can prosecute me for violating this case and statute law, if it's a capital offense, anything where they can give me a jail term, they have got to have the consent of the Government. Remember the Declaration of Independence, deriving their just powers from the consent of the governed.

I am one of the governed. The people on the Grand Jury are the governed. And the U.S. Attorney, the I.R.S., they have to come from down here, and they come up here and they ask for the consent. That's what an indictment is. It's the consent of the governed to prosecute -- for the Government to prosecute one of the governed under this law.

Now, do you remember saying the pledge to the flag, and you said, "One nation under God"?

Nobody ever taught you no place, school or church. No one ever instructed the people of this nation how to maintain one nation under God. We thought that these people were supposed to give us the prayer in the schools.

We thought these people should take care of the abortion situation. We thought that was all down here. That's not where it's at. Because you see up here, on the Grand Jury and over there in the jury, of course, they are the ones who are responsible to see to it that we maintain one nation under God because it isn't their responsibility down here at all. It's ours. It's we, the people, who are to maintain one nation under God.

So, they come up here and they say Mr. Beckman is in violation of the I.R.S. code, and so they listen to the accusation. They listen to the case as it's presented to them. And after the case has been presented to them, they say now, we will make our decision.

They may ask the U.S. Attorney to leave the room because they want to make it -- they want to discuss this.

And so they say, this case and statute law, the I.R.S. code, does it comply with the laws of grammar? Does it? Is wages and income, are they the same thing?

Can we be required to volunteer all of this type of thing.

And they say, "hey," the I.R.S. code appears to us as though it is in violation of the laws of grammar. They say, "How about the laws of common sense?"

Well, common sense should tell us if you take over 50 percent of what Mr. Beckman is producing you're going to discourage Mr. Beckman from producing any more, aren't you? You are going to destroy his incentive, his initiative to go out and create wealth. Common sense tells us if you tax too much -- the founding fathers said 14 percent is too much. --

Today we pay over 50 percent, and we have not started a revolution. And we haven't started a revolution because we don't need a revolution. And we don't want a revolution.

We want reformation; and that reformation comes about when we have people on the Grand Jury and on the jury who recognize this is lower law, and this is higher law, and that if this lower law is in violation of the higher law, what do we do?

We don't enforce it.

We only enforce the higher law, the laws of common sense. Truth, justice, morality. Is fear -- can we put fear up here as one of the ingredients for an orderly

society? Is it a just power? How about God's laws?

They say, "Well, Christ said, 'Render unto Caesar that which is Caesar's.'" Now what is Caesar's?

Christ didn't say what was Caesar's, did he? He said, "Render unto God the things that are God's."

So the individual has to make up his mind as to what belongs to God and what belongs to Caesar. And, of course, Caesar's been dead for a long, long time.

Remember the chain of command. When that was written in the Gospels and when Apostle Paul wrote what he did in Romans, the 13th chapter, when that happened, Caesar was sovereign.

Caesar was up here, and he actually put himself above God because he did not recognize God or God's laws. He said, "I'm above God." He said, "I have a divine right." You've all heard of divine right of kings and all that.

They say, "Well, how about back there in First Kings, the 12th chapter. It tells us that there was a tax rebellion. King Rehabom had gotten very much out of hand. His father, King Solomon, became very oppressive. His tax collecters were going out and using whips to frighten and terrorize the people to pay these taxes. And all he was doing was stashing it.

And then young Rehabom came along, and he was even

going to be worse. And God sent his prophet out to ordain or annoint a new King before the tax rebellion ever happened.

And there was a revolt in the kingdom. And the kingdom was divided. First Kings, 12th chapter, makes very, very good literature. It's good reading.

Taxes are in the scriptures. It says the rich shall not pay more and the poor shall not pay less. The Psalmists, David, he said, "Bind your kings with chains." You either bind your kings with chains or they are going to govern you, and they are going to abuse you and terrorize you.

The entire Old Testament is a story that tells us about the rise and fall of kingdoms and empires. And it's very, very clear that any kingdom that was governed by these laws here was a lasting kingdom. And it was a kingdom that was blessed.

But you get a kingdom what was ruled by case and statute law, the laws of men, and you would find that that kingdom did not last because that kingdom was destroyed over and over and over again.

These are the higher laws. These are the lower laws. Who's going to judge? Who's going to see to it what law we operate under and function under in this country?

It's us. We, the people, are the ones that are responsible. Not the marshals. Not the F.B.I. Not the U.S. Attorney's Office, the Congressmen or the President. It's you and I, and we got to get it back in our hands or it's going to go down the tube.

MR. SPIEGEL:

Q Now, Red, let me ask you this. What happens if the Grand Jury does come down with an indictment? What do you tell your people at the seminars then?

A Then the jury is the last check in our system of checks and balances. And, of course, on the Grand Jury it takes a vote of 12 out of 23 to indict, but on the jury one person can exercise more power than the President, the Congress and all of the judiciary because they are above all of the laws written and passed and put upon the backs of the American people.

Q How is that one juror above the President and state in statute law?

MR. MOROZ: Your Honor, I'm going to object in relevance to this. It has nothing to do with taxes, what he's talking about now.

MR. SPIEGEL: Your Honor, let me rephrase the question.

Q How do you tell people at your seminars that this one juror could be above the case and statute law and the

President?

A It's the chain of command because that one person is above the Constitution. That one person is above the Congress, above the judiciary, above the president. They are above that order of authority in this country. It is so vital that we understand it.

Q Now, I'd like the record to reflect that I'm tendering to the witness what has been marked Defendant's Exhibit F for indentification. Could you identify that please for the jury?

A Identify what?

Q This Exhibit. What is that document?

A Well, it's -- what it was originally is a copy of the Constitution and the Declaration of Independence that was published by the American Legion in this country. And we added a little introduction, and on the back cover we have the 10 -- first 10 planks of the Communist Manifesto so people can compare the two systems.

You can compare the Constitutional republic form of government that we have, and you can compare it with the 10 planks of the Communist Manifesto.

Q Why would you put the Communist Manifesto with the Constitution and Declaration of Independence?

A Well, as I said, we approach this from a philosophical viewpoint and political viewpoint, and I think it's no

more than right that the American people have the freedom of choice.

And they can take a look at the two kinds of Government, the two forms of Government, and come to their own conclusions.

Q Now, do you tell people at your seminars that the income tax system has anything to do with the Communist Manifesto?

A Well, it's the number two plank of the Communist Manifesto.

Q What is that plank?

A It's a heavy or progressive or graduated income tax. We have to recognize that the Communist Manifesto is a formula which has been designed to destroy middle class.

Q You testified earlier that our country has lasted for about 106 years without an income tax?

A Right.

Q How can this country survive without an income tax?

MR. MOROZ: Your Honor, I object unless he tells what he said in the seminars.

MR. SPIEGEL:

Q How do you tell people at your seminars that this country can survive without an income tax?

A There are Constitutional taxes prescribed in Article I, Section 8 of the Constitution, excise, imposts and

duties. Those taxes are more than sufficient. They have enough power to tax us.

Our firm belief, of course, is that the income tax is designed more as an information gathering service than a revenue producing measure because of the control factor, because they learn very much about you. They know everything about you when you file an income tax return. And basically an uncontrolled government, government that's out of control of the people, that's how they maintain control is by maintaining information. And they can -- they know what people are doing, where they are at, and all of this.

And they do it by way of information.

Q Well, do you tell people at your seminars then that the I.R.S. is used as a form of social control in this country?

A Yes. They are a tool.

Q A tool used for what purpose?

A To basically -- to destroy middle class. It's the middle class that is being terrorized by the I.R.S.

Q I'd like the record to reflect that I'm tendering to the witness Defendant's Exhibit H -- G for identification and I ask you to identify this document.

A Yes. I wrote this book. And as I said earlier, I had no intention of being an author, but I couldn't even get

anybody to ghost write it, and I ended up I wrote it myself. And now it's going very, very well. It's on it's way to being an all time best seller.

Q Can you give us the substance of what that book is about?

A Well, the title is "Born Again Republic," and I talk about revolution, how that we dare not afford -- we can not afford to have a revolution in this country. That would be the most foolhardy thing and the most dangerous thing we can do is to have a revolution because revolutions are stolen. The Russians, Chinese, Cubans, Nicaragua, Angola -- these revolutions have been stolen.

We can not afford it. We don't need it, and I explained why we do not need that. Because once we get across to the American people their right and their duty to judge the law written by our tax consuming public servants, once they understand that then we can bring this thing back and we can again have absolute control of our Government.

And I have a chapter in here on the schools. I have a chapter on the churches because the churches should have been a separate power really.

Thomas Jefferson said, "I would hope that you would maintain a separation of church and state." He was a master of the English language, and he didn't use

words carelessly. And they have tried to tell us that separation of church and state meant that the church was to be neutral.

He didn't use the word "neutral." He used the word "separation," and that was the same word he used when he said separation of powers between the legislative and the executive and the judicial branches of Government.

The church is that area of our society which should have been most sensitive when our public servants did not tell us the truth when we were lied to. The church should have spoke out and said "This is evil. This is wicked."

The church should have been a check against the Government instead of being a neutral force out there, they should have been out there watching what the Government is doing. And if it became evil and wicked, they should have discerned it, and they should have passed on to their people the information that they needed as to how to remain one nation under God.

And there's a chapter on the schools in here. Any Government that controls the schools is going to control the minds of the people. And this is how people are controlled, and this is how they are sent into wars between governments.

I have no quarrel with the farmer over in Russia,

my counter part, the man that's raising crops and feeding cattle and that kind of thing. I have no quarrel with him, but if Government's getting control of the minds of people, they find ways of getting the farmer here fighting the farmer in Russia, and I have no grievance with him. I have no grudge.

Government has been man's worse enemy. I say that over and over again in this book. Government has been man's worse enemy from the beginning of man on this planet. Famine, disease, natural catastrophies, earthquakes, and tornadoes, all these things have never taken the toll of life that governments have. Governments have been man's worse enemy and from the very beginning. And of course, we were given such a unique form of government where the people were to retain control and it worked beautifully for a long time and we can still make it work.

And of course, the book is very, very positive, and the one chapter in here, the last chapter, because this also contains the Declaration of Independence and the Constitution.

I said, "Let no one blame another. Let no one blame another."

Let's accept our responsibility as individuals. I'm not here blaming the President of the United States,

and I'm not here blaming the congressman. Here's the blame right here because for 25 years I saw this thing starting to fall apart, and I said, "Why doesn't somebody do something?" And that's in here, too.

I said, "Why doesn't somebody do something?" And I dare say a lot of people in this courtroom have said the same thing, "Why doesn't somebody do something". And then about 1975 it dawned on me that I was somebody and I had to do something.

And that's why I'm here because I am determined that I'm going to do something because of my family, my grandkids. I want to leave them something. When I leave this planet, I want to leave something for them.

Q Now, I'd like the record to reflect that I'm tendering to the witness Defendant's Exhibit H for indentification and ask if you can identify this.

A This book came off the press in February of this year. There are six letters to an imaginary I.R.S. agent in the beginning. They have had a tremendous impact since they have been out. The book is going back for a third printing right now.

Q What is the title of the book?

A "Do Unto The I.R.S. As They Would Do Unto You." The six letters are basically designed to take the fear off of the backs of the American taxpayer and put it back on

our public servants where it belongs.

If there is to be any fear in our system, and I don't want any fear in our system, but if there is to be any fear, it should not be on the backs of the working people in this nation.

There are -- it belongs on the back of our public servants, and they should be under that law in the Constitution. And the Constitution must be their guide. And it must be the only source of power which they have.

There's six letters, and then I write for a number of newspapers. I belong to a couple of press associations. And I have a chapter here, "History's Biggest Cover-Up," and how that back in Montana in 1863 we had the goldmining camps, and we had a reign of teror.

It was being perpetrated by the elected sheriff, and in 18 -- December of 1863 the miners formed the Montana Vigilantes, and they brought order to the Montana territory where we had a state -- a situation where gold could not be shipped without it being robbed.

Men were being murdered in cold blood and there was no justice. And the people had to take it into their own hands and set their own Court's and do a job that should have been done by their elected officials.

And it wasn't done. And they restored order in a

matter of a few weeks and months. They restored order to the society in the State of Montana. And it's just a little article that's been printed in quiet a number of newspapers and such. And then I have one on the stolen votes.

Our votes have been stolen; just literally stolen.

Any politician that would promise you one thing in the campaign and then if he does the opposite while he's in office, I don't believe there's a better way to put it. I don't think there is any way -- I think that we have a time now where we are going to have to talk bluntly and very clearly.

I think our votes are being stolen, and that's an article. "Portrait of an American Traitor." The I.R.S. didn't get its power from the Congress. The I.R.S. didn't get their power from judiciary. They didn't get it from the executive branch of government. The I.R.S. got their power from 12 people on the jury that said "guilty," and that's what puts the fear on the backs of the American people.

So that's one that's been printed fairly widely. One nation under God or Caesar. Are we under Caesar? No. You and I are Caesar. Everyone in this country and the Constitutional republic is a Caesar. We are to be kings in our castles. We are not to be harassed by the

Government. If you don't know the solution, you are the problem.

Another one here that your probably are going to see a great deal in print I'm sure is entitled "A New Minority." They told us in the government school we have a democracy. Thomas Paine, that great motivator of your American revolution told us democracy is the vilest form of Government there is.

Cicero, he watched the Roman empire crumble. He said, "When the people discover they can both themselves benefits from the public treasurer that society will collapse."

That is what Thomas Paine told us. That's what James Madison, the father of the American Constitution, he said, "If you have a democracy, you'll have loss of property rights. You'll have contention and chaos because there's not one time in history where a majority ruled democracy has ever worked."

They have always destroyed themselves and the reason is because you've usually got a minority, a criminal minority which will gain control of the sources of information and education, and they will control the people.

In Hitler's Germany it was mainly a majority rule, but the people believed what their government told them,

and they ended up, they destroyed themselves.

And so this one here, "The New Minority," it tells how the people -- you can't protect the majority without protecting the minority, because the majority is always made up of a number of minorities.

And there's only one way you can take care of the majority, and that is by taking care of one person at a time.

You've got to maintain his rights and that's what the Bill of Rights is basically all about.

"While People Sleep." That is -- that's an article that I wrote. I got up at 2:00 o'clock in the morning and wrote an article that the only thing that was corrected was the spelling and the punctuation.

It has been printed by the millions.

"We can bring honest government back." "You, me and the Fed."

"How we can control the Federal Reserve Bank." You and I can control the Federal Reserve Bank. We have that power. We don't have to allow them to run interest rates up to 20 percent. We don't have to allow that and destroy our economy and all that.

"Consent of the governed." "Three votes of the people." You've got three votes, not one. You've got the right to -- you've got the right to control. You've

got two votes after that politician has stolen your vote on election day. You don't have to let him have just a free ticket to where he can write any kind of law that he wants to write. We don't have to live with that.

Q Now, Red, if you could summarize what basically you cover in your seminars and in your books and in your columns for the years 1977 through 1981, how could you summarize that?

A I love my country but I don't trust my government. I don't say that facetiously. I don't say that because because I'm angry. I say that because we have the documentation. We have accumulated documentation that would just overwhelm many of you.

Documentation that proves that we have had some very, very dishonest people that we have trusted and we have put a tremendous amount of trust in these people.

I like to -- I like to bring to the people the fact that the power -- we have got the power. And every place I go I run into people that say, "Hey, we are going to have a revolution."

And we have got people out there promoting a revolution, too, ladies and gentlemen. We have got socialists and communists out there that want to promote a revolution because they want to steal it. And I say, "Hey, we don't need that. We don't want it. We can't

afford it."

There's no way. Our Founding Fathers gave us a perfect Constitution, ladies and gentlemen. They told us how it could be changed and changed according to law. And it has been changed. But they tried to change it and they tried to use fraud in the Sixteenth Amendment and the Seventeenth Amendment. The documentation is in that same file on the Seventeenth Amendment.

We've really not had a legal or a legitimate Senate in Washington, D.C. since the Seventeenth Amendment came in effect. And that came in 1913 with the income tax, the Sixteenth Amendment. We've got a long ways back, but it's going to be very, very easy if we can get across to enough Americans.

We all got kids and grandkids. And if we can get across this message of your three votes and the power that is yours, and how we can control this monster, it will all happen. It will all happen very, very rapidly and very, very quickly.

And, of course, I'm very much an optimist. I believe we are doing it. I believe we are seeing it happen. All across this land we are seeing people becoming aware of the power which is theirs, and they are using it. And they are using it properly.

Could I see that "Born Again Republic" again by

any chance? Thomas Jefferson made a tremendous comment, and I use it extensively. He said, "I know no safe depository of the ultimate powers of the society but the people themselves.

"And if we think them not enlightened enough to exercise their control with the wholesome discretion, the remedy is not to take it from them but to inform them."

I think we have given up too much of our power, and we did't because we weren't informed.

That's why I lecture. That's why I write books. That's why we produce television specials you're going to see on major networks across this nation in the next few months I'm sure because my entire mission is to inform the American people as to their powers.

Q Red, I'd like to thank you for informing us here today. I have no further questions.

THE COURT: We'll recess for about 15 minutes. Remember the admonition I've given you throughout the trial. Don't discuss the case among yourselves. Don't form or express an opinion on it.

(Short recess.)

(The trial was resumed out of the presence and hearing of the jury and the following proceedings were had, reported as follows:)

THE CLERK: All rise.

MS. HUSUM: Your Honor, we do have permission for Special Agent Hruska to testify. However, prior to that there is a consent that Mr. Spiegel will have to read into the record. Should we do that now or should we wait?

THE COURT: You want it read in the record before the jury? You probably don't, do you?

MS. HUSUM: No.

THE COURT: Could you have him hold for just a minute? Just a minute is all.

Can we do that now?

MS. HUSUM: Yes, we can. Mr. Spiegel?

THE COURT: Would you do that, sir?

MR. SPIEGEL: Yes. You want me to read both?

MS. HUSUM: No. Read the one.

MR. SPIEGEL: Okay. For the purposes of the above captioned case and related matters, although I don't know what they mean by "related matters," and I would reserve any consent as far as that goes, I Andrew Spiegel, attorney for record for Allen B. Buchta, hereby give my knowingly and voluntarily consent for the Internal Revenue Service and its agent, David Hruska, to disclose any tax information the Internal Revenue Service has concerning the tax matters of the Defendant for the tax years 1970 through 1980.

The Internal Revenue Service may disclose the above described information to one, the Judge of the above captioned case, U.S. District Court for the Northern District of Indiana, Hammond, Indiana; two, to the public in open Court in the above captioned case.

THE COURT: Who signs it?

MR. SPIEGEL: Pardon me?

THE COURT: Who signed it?

MR. SPIEGEL: Who signs it?

THE COURT: Is it a document that is signed or are you just reading it?

MR. SPIEGEL: I'm just reading it into the evidence.

THE COURT: You are just reading it into the record?

MR. SPIEGEL: It's done at the behest of voluntarism according to the I.R.S.

THE COURT: What? Does that mean anything as far as this trial is concerned?

MR. SPIEGEL: No, Your Honor.

THE COURT: You want to call the jury?

(Jury enters.)

THE COURT: You may cross-examine.

MR. MOROZ: Thank-you, Your Honor.

CROSS EXAMINATION BY

MR. MOROZ:

Q Mr. Beckman, how many seminars did Allen Buchta attend of your seminars in 1977 or '78?

A I would not be able to say because we do not keep a record of those who attend. We don't charge for our seminars, and we have no membership or no dues or anything like that. All of these are public.

THE COURT: Is your answer you don't know?

A I don't know.

MR. MOROZ:

Q Do you charge for the books you publish?

A Yes.

Q And do you charge for your lectures?

A No. Very, very rare. I never have set a fee. I will be contacted and they will say, "Well, we will pay your expenses," or this type of thing. It is not a business proposition.

Q What's your educational background?

A Well, I have a high school and, of course, some college and a tremendous amount of reading. Basically self-educated.

Q You didn't graduate from college; you just had a couple

A No, I did not graduate.

Q Do you also put out brochures, printed brochures?

A Yes. A great many of them.

Q And you charge for those, don't you?

A A certain amount, but we give far more away than we ever charge for.

Q Did you come here on your own expense to testify in this trial?

A I bought my own ticket, yes.

Q You don't plan to be reimbursed by any person -- Mr. Buchta or any person here today?

A There is absolutely no agreement that I be paid.

Q I want to show you what's been marked for indentification only as Government's Exhibit 114 and 115. Let's start with 114, "Portrait of An American Traitor."

A Yes. That's in "Do Unto the I.R.S. as They Would Do Unto You."

Q That is written by you?

A Yes.

Q M. J. Red Beckman?

A Yes. That is me.

Q I have another one here, Government's Exhibit 115. There's no title on it. Can you identify that? Are you the author of those comments?

A Well, unless it's been changed and I have had a number of people around the country that have changed the

meaning -- or the wording in some sections because it's not copyrighted. It says, "Permission to reprint granted," and most of them say "Granted and encouraged." This one here is probably a couple years at least old.

Q Okay.

A Because it doesn't say "granted and encouraged." Most of them now all have "Permission to reprint granted and encouraged." And this is when people order these or ask for these, we tell them, we say, we will give you a copy but then you go and have your printer print them for you because they can do it cheaper. In Montana our printing costs are very high.

Q Let me ask you if you would read this paragraph in its entirety?

MR. SPIEGEL: Your Honor, I object to any questions on the document unless they introduce them into evidence.

THE COURT: Why don't you offer them?

MR. MOROZ: I am establishing if this has been changed, Your Honor.

THE COURT: Then read it to himself.

MR. MOROZ: That's what I said.

THE COURT: I'm sorry. I misunderstood you, and I think counsel may have done the same.

MR. MOROZ:

Q I'm sorry. Would you read it to yourself to make sure there are no changes.

A What did you want me to do, just read it?

Q Just yourself, the complete paragraph to see if there have been any changes made. I think you said there may have been changes made in some of your documents?

A As near as I can tell, that's very near the original.

Q And also I'd like you again to read to yourself this paragraph here in it's entirety, please. See if there are any changes from what you have written.

A Uh-huh. Pretty well; it's pretty close.

Q Any substantial changes?

A Like I say, I wouldn't guarantee it. I have to check the original but it's very close. I'm in total agreement with what is said there.

Q In those two paragraphs don't you encourage people to get on juries and hang up juries no matter what the evidence is?

A Absolutely. No equivocation whatsoever.

Q Also in jury selection you're not to imply at any way that they are or agree with tax protesters; they are to go along with the game, correct?

A Right, absolutely.

Q To not tell the complete truth when they are under oath to get on that jury to go along with the game in your

own words?

A Would you state that again?

Q Would you encourage them to get on the jury to go along with the game and not let the prosecutor and Judge know that they are sympathetic to tax protesters?

A Absolutely.

Q And then to get on that jury and selected to hang the jury?

A Right.

Q To subvert the judicial system?

A Right -- no.

MR. MOROZ: I have no further questions, thank you.

THE COURT: Redirect?

REDIRECT EXAMINATION BY

MR. SPIEGEL:

Q Red, you were about to answer or explain your answer to the previous question. Could you do so?

A Well, to explain the answer I need to go to the first chapter of Exodus in the Bible, and the Pharaoh had declared himself to be God, and that he was worshipped by the Eygptian people.

And he became very concerned about a tribe of people, the Israelites, and so he handed down a law. He made a law and he said the midwives were to murder.

They were to destroy all of the male children at birth who were born to the children of Israel.

And the Scripture is very, very clear. The midwives recognized that there was a higher law, that Pharaoh's law was a lower law, and the midwives refused to destroy those male children.

And the Pharaoh called him in and he said "What is going on here? You're not obeying my law." And the midwives literally told a lie. They said those mothers of Israel are so strong that they have the children before we ever get there. And the Scripture says God dealt well with the midwives.

And over and over again in the Scriptures you see this where if you have an evil thing, an evil force, you don't ever let the thief know where your treasures are. You don't tell him. You send him on a wild goose chase or what have you. As I explained in "Born Again Republic" the jurors' oath is an absolute fraud.

Q Now, what does all this have to do with hanging up a jury in a tax protester case?

A The people of this nation, as I said, it's the people on juries who gave the power to the I.R.S. to become such terrorist organizations.

And it's the people -- you see, this is where they got their power. If they got their power from the jury,

then we on the jury have the right to take it back the same way.

This is how the prohibition thing was taken off of the books. The juries refuse to convict. And it's happening right now with the income tax in this country. Many, many -- we're having many, many jury verdicts now that are coming back and saying "not guilty." And it's because the American people are disturbed. They are unhappy, and they want solutions.

And I think we have got a tremendous solution here, and, of course, with the documentation now in the Sixteenth Amendment coming along and the research that's being done, we will have the documentation to verify everything that we're saying.

Another thing too that I mention in my seminars all the time is that you have to remember that those fellows that kicked the tea in Boston Harbor all violated the law. Every man who signed the Declaration of Independence committed the act of treason. Every one of them. Those men violated the law, but they had determined that the law was not a good law, and they were not going to live under the law of the tyrant.

And I think we have got men in this country today that have the same kind of commitment, they have the same kind of information backing up their stand, and

they are doing things. Things are happening in this country.

Q So, would it be fair to say then you are not advising we, the people, to subvert our judicial system. You're asking them to abide by our judicial system as you set forth?

A Strengthen it. Take the load off the judges' backs and put it on the backs of the people where it belongs. And don't forget what I said in "Born Again Republic", let no one blame another. Let's not spend our time spinning our wheels and saying, "Well, so and so did it to us." Let's point the finger at the one that is on the bottom line.

MR. SPIEGEL: Your Honor, the Government did not offer Exhibits 114 and 115 into evidence. If they are not going to do so, I would like to mark them as Defendant's Exhibits and use them at this time. Are you going to offer them?

MR. MOROZ: No. I'm not going to offer them.

MR. SPIEGEL: Do you want the Government stickers to remain on there?

THE COURT: Sure.

(Exhibits remarked.)

MR. SPIEGEL: We offer Defendant's Exhibit -- we will make them H-1 and H-2 for indentification into

evidence.

THE COURT: Any objection?

MR. MOROZ: No objection.

THE COURT: H-1 and H-2 are admitted.

(Whereupon, documents previously marked Defendant's Exhibits H-1 and H-2 were admitted in evidence.)

MR. SPIEGEL: And for the record H-1 is Government's Exhibit 115. H-2 is Government's Exhibit 114.

MR. SPIEGEL:

Q Now, Red, what do you mean when you say that jurors' oath is an absolute fraud?

A Well, basically the courts are asking the people and more or less demanding almost that the people enforce the laws written by the Congress and signed into law by the President.

And I think I've said enough about your stolen votes and how we have politicians who are writing laws which are not laws which we voted them into office for.

And I'm firmly convinced that we got a tremendous amount of bad law written on the books in this country. And it's law which you and I have the right to judge and decide whether we want to live under it whether we can live under it.

I'm convinced that the I.R.S. and the income tax

is one law we can not live under, and we can not survive. Our economy can not survive unless we reward those who work and give them the fruit of their labor. We have got to let the working man take that which he earns.

It's his. It's his property, and we dare not let a majority or a minority or anyone else have the right to plunder that which is being created by the individual who works or creates, produces.

Q Now, would it be fair to say that you don't tell people to violate God's laws?

A Absolutely.

Q Would it be fair to state that you don't tell people to violate the laws of common sense?

A Right.

Q Would it be fair to say you don't tell people to violate the laws of grammar?

A Right.

Q Would it be fair to say you don't tell people to violate the Constitution?

A Right. But we are not under the Constitution unless we are public servants. We are above the Constitution of the United States.

Q And again the Constitution is for what purpose then?

A It is the law written and designed to create our

government and to control our government.

Q So, when it's said that the Constitution is the supreme law of the land, what do you tell people that that means?

A It means just what it says and says what it means. It is the supreme law which governs our government. It is a law written to govern government. Always before in history we've always had governments of men.

We have had kings. We have had emperors. We have had men who have set themselves up and said, "I am the Governmentmand you will do as I say."

Our Founding Fathers came out from under a monarchy and they said, "We are going to have a different system. We are going to have -- we are going to launch out on a new experiment." They said we are going to have a nation of law.

Magna Carta, of course, laid the ground work. Magna Carta came into being at 1215 because the barrons caught King George in the Meadow of Running Meade and made him sign Magna Carta.

And it was the beginning of man developing a law with which he can govern his government. And, of course, it was know less than 23 times from 1215 until 1776 that the people had to take the sword and make their King come back under the Government -- under the

Magna Carta, under the law. That's in England.

And our Founding Fathers, that was their -- that was their basic foundation for what they tried to do for us is using Magna Carta. And, of course, see, under Magna Carta they have the jury, and Magna Carta did not guarantee freedom for the people.

Legislative bodies have never given freedom to people. It has always been juries in our system. And in England it was the juries who established the freedoms of the people. The trial of William Penn in September of 1670 is where the freedom of religion and the freedom of speech were established under Magna Carta.

And it was done by a jury in the William Penn case. A very fascinating story of how the government tried to force the jury to enforce their laws. And the jury refused. They were locked up. They were jailed. They were kept without food, without plumbing and all this, but they established the freedom of speech and the freedom of religion. That was done by a jury in 1670.

And juries all down through the history since Magna Carta, the English speaking world, have been the source of freedoms for people.

You hear a lot about immunity. The Supreme Court will grant immunity.

MR. MOROZ: Again, I think he's answered the question.

THE COURT: I have forgotten what the question was.

Could you ask another question?

MR. SPIEGEL: Yes.

THE COURT: Listen very closely to the questions, sir, and merely structure your response to the question asked.

MR. SPIEGEL:

Q Now, you had compared this chain of command here to the chain of command in the military. Do you recall that?

A Yes.

Q What rank would the people be?

A Well, I would say they are about the Major, Colonel, Lieutenant Colonel.

Q Is it true what you're basically saying is Lieutenant Colonels don't have to listen to Privates?

A They have to listen. They have to take into consideration, and they have to decide whether it is a good law and whether it is proper.

This is why Thomas Jefferson said you have got to inform the people. You have got to keep them informed and allow them to make these decisions as to what is good and what is bad and what law they want to live

under.

Q So is that all that you are basically saying is that people have to decide for themselves what is good and what is bad?

A If you are going to have a Government of, by and for the people, that's the way it's going to be. Otherwise you're going to have a government of, by and for public servants.

Q And when you say that jurors should disregard their oaths in tax protester cases, what do you mean by that?

A I would say not just tax protester cases. There's a lot of cases that they have to pay attention to the rights of the citizen, and they really need to have somewhat of a comprehension of what the Constitution is about.

The Constitution isn't really taught. It isn't really stressed how important it is for the average individual to know the Constitution because it's the law which the people wrote to govern and control government.

And so, if the people on the jury, if they know the Constitution and if then they are on the jury and they have the opportunity to judge the law, and if it's in violation of the Constitution, they have every right in the world to speak out and say that they don't agree with it and that is with their vote, using their vote.

MR. SPIEGEL: Thank you, Your Honor. I have

no further questions.

THE COURT: Re-cross?

MR. MOROZ: No re-cross.

THE COURT: You may step down, sir.

(Witness excused.)

MR. SPIEGEL: Your Honor, at this time the defense calls Agent David Hruska.

THE COURT: Did you admonish your witnesses to leave the courtroom after they have testified?

MR. SPIEGEL: After they have testified they are no longer witnesses, I thought.

THE COURT: Throughout this trial they will not be in this courtroom before and after they have testified. That's the rule.

MR. SPIEGEL: Fine.

Red Beckman's Testimony on Jury Nullification

Mass. General Court. Committees. Hearings.
Income Tax 1910.
Hearing of the Committee on Federal Relations
on the Income Tax Amendment.

Speech of Mr. James A. Watson made before the Committee on Federal Relations.

Subject: The Proposed Income Tax Amendment.

Chairman and Gentlemen of the Comm.

"I will give just a few reasons why this amendment should pass. I have always favored the proposition on the ground that those who are able to support the government should be compelled to do so, rather than those who are not. I have studied this matter a great deal and will say that in January, 1799 under Mr. Pitt the income tax was first enforced in Great Britain; but I shall not talk about the work of the income tax in Great Britain for fear I would bore you. As regards the income tax in America, how many members are aware of the fact that we have had an income tax? And how many of you are aware of the aount of revenue derived from that tax? An income tax was enforced in the United States from 1861 to 1870. The amount realized from that tax was $365,000,000, and it effected 350,000 people

I am going to make a few brief references to articles on this subject, nowin the State Library and ask you to give them your attention

Bliss' Ency. of Social Reform 1908, published by Funk and Wagnarr page 601 which gives you a history of the Income tax;

The United States tax, by F.A. Wyman, Member of the Suffolk County Bar Association, 1905;

Speech by D.B. Hill, U.S. Senate, Jan.11,1895 and The Income tax by J.A. Glenn.

I have not read these articles thouroughly, but read one or more of them and they were favorable to the income tax, and there is a defence for the position of some of the people of this state who are opposed to this proposition. I trust the committee will consider thse references.

I should be pleased to read to you the message of Gov. Fort of N.J. to his Legislature.

"As to the claim that the Federal Government might injure the States as such by taxing State bonds under an income tax, there are two satisfactory answers:

"First: Congress is representative of the States and elected bythe citizens and the remedy is in the hands of the people of the States.

"Second—No Congress could be elected that would lay any tax with the view of destroying the power or integrity of the States.

"I am not inclined to accept the statement that the Supreme Court of the United States might construe the words 'from whatever source derived' as found in the pending amendment as justifying the taxing of the securities of any other taxing power. There is no express provision in the Federal Constitution at present prohibiting the Congress from imposing an income tax upon the securities of a State. Yet in the Pollock case the Court held, speaking through Chief Justice Fuller, as follows:

"As the States cannot tax the powers, the operations or the property of the United States, so it has been held that the United States has not power under the constitution to tax either the instrumentalities or the property of the State and one of the instrumentalities of the State Govenment. It was long ago determined that the property and revenues of municipal corporations are not subject to Federal taxation."

"The Supreme Court of the United States has up to this time been the sure reliance not only of the nation, but of the States. The future may be safely rested there. Inability to impose an income tax if the necessities of the Government required it would amount to a national calamity."

"An income tax is the most just and equitable tax that can be levied. It imposes the exactions of government upon the citizens in proportion to his ability to bear them and upon the basis of the wealth which, under the laws of the country, he has been able to accumulate. 'Men should contribute to the needs of the State as God has prospered them.'

"It is evident that the burden of general taxes is not proportionally borne by all upon whom the burden rests. The citizens of moderate holdings, real or personal, doen not attempt to escape the prompt discharge of this obligation. This cannot be said of those who are essenttially rich and whose holdings are large. It

"It has been said with some semblance of certainty that over eighty per cent of all the vested wealth of this country is owned and controlled by 3,000 estates, corporations and individuals. The casual observer is convinced that the burden of tax-paying is borne very largely and out of all due proportion by the citizen of moderate menas.

"The United States should posses the unquestioned power to tax incomes. It may not be necessary to use the power but if emergency should arise which requires it the right to tax should exist. Dongress practically unanimously adopted and submitted this proposed amendment.

Speech of Mr. E. Jerry Brown before the Committee on Federal Relations. Subject:—The proposed Income Tax Amendment.

Chairman and Gentlemen of the Comm.

"I feel that under ordinary circumstances, those citizens who understand this matter would find their way to this committee room to register their opinions, unless it is that matters have gone to far for them to rais their feeble voices before this Legislature and petition Congress to amend the Constitution. I am one who is interested in reform measures and have felt it my duty to appear before you on the subject of the proposed income tax amendment.

This is a most important question that will come before the Legislature this year, and you are to approach the measure from the stand point of the Constitution of the Commonwealth

Congress should exercise. Of what use to give to the nation the sword without the purse. The Constitution itself clearly admits an income tax. We know that the framers of this Constitution said that Congress should exercise the powers herein contained. Three-fourths of the States must approve of the passage of this amendment. I believe the destiny of our country is involved in this question. The opponents of this just and equitable tax count on the aid of the Eastern States, and the fringe of states around them, so that one-quarter of the Union may ofset the rising tide of West and South. The vote of Massachusetts alone may be enough to hold up this amendment. It was never the policy of this nation to tax the man of small income. He was supposed to be doing his share when he clothed and educated his children. Men should be taxed in proportion to their ability to bear the burden.

Why shouldn't the swoolen fortunes and the vast incomes of this nation bear their due and fair proportion of the cost of maintaining our Federal Government. From what other way than this are we going to level those fortunes. Do you realize that conditions in this country now are not disimiliar to those which led to the French revolution? I know it is improper to discuss the French revolution nowadays, but it is well to look at the facts of today in the light of history. Human nature has not changed. The only mitigating factor in our condition, gentlemen is God's providence in giving us large crops and prosperity. We as a nation wait only for the imte when the crops whall fail and a new distribution shall come. Then you invite the deluge.

From the very foundation of equity this income tax would be just, because those who receive much should be willing to bear much. Jefferson said,'' I fear monopoly. Whoever has a large fortune has large privileges, and should pay his porportion of the country's debt.'' The income should be subject to the dictation of Congress. I want you gentlemen to pass this income tax amendment.''

Q. by Mr. C.H.Brown.

''Don't you think Massachusetts should reserve this taxing power to herself for the maintenance of her hospitals, schools and public roads, instead of giving this money into the hands of the government for distribution?

A. by Mr.Brown.

''Do you know what happens here when organic labor comes up and asks for things?'' You don't want to do that for the wealthy people will go elsewhere but when you put it into the national treasury you cover the whole matter. As it is our wealthy people go to England to hobnob with royality. They go over there for what they can get out of their wealth.

Q. by Chairman Farley.

''What affect would this income tax have upon the tariff?''

A. by Mr. Brown.

''An income tax, collected by the National Government, might be made to equal half, or more than half, of the national revenue; then, if only the other half of the revenue was raised by the tariff, it was taken away one-half of the burden now imposed upon all of the people by the tariff. The whole subject of the affect of a possible national income tax on the tariff was enlarged upon before.

I referred to the French revolution because in France one-half of the property was held by the one hundred nobles; one-sixth by the churchand one-third by the twenty-five million people known as the third estate. Think of our own third estate and its wealth. Our new wealth, created annually, is the factor that makes conditions now different from those of France. What would happen if the crops - the new wealth- should fail? I advocate the income tax as a check upon the congestion of wealth, perhaps the only honest method of leveling these vast fortunes derived by the exercise of special privileges. Why give the nation the sword if we withold the purse.

Much has been said here as to whether or not our Congressmen are sincere in voting for this amendment. If three-fourths of the states shall ratify this amendment it will become law;

those Congressmen did more than refer this proposition to the states. They passed it and it was referred to the states forratification. When a Congressman came to one of your committees and asked them to vote against it, I think that was below the belt.

As to the men who framed the Constitution I will say that the Hon. Rufus King said he was for the unlimited taxation power. They taxed the states according to their ability to bear.

Q. by Comm.

"When this tax was assessed did they collect on gross or net income?"

A. by Mrs. Brown.

"That was net. They used the term; "purse and sword" and Chief Justice Marshall said; "it is then necessary to give that power in time of peace as well as in war. I think that the power of direct taxation is essential." What can a nation do in time of trouble when she finds that she is limited to impost duties? Go back to the year 1862 and find Lincoln-God's chosen American- was confronted with this question. The government needed money and had to borrow it. The banking powers were approached. "How much will you loan us on one dollar," Lincoln asked. $0.84 was the answer. That is where you have the influence of the money power. We had to boroow money at the time of the Spanish war. If we can borrow a part of the credit of the people in N.Y. why cant we do this on the whole country? In time of war the nation shall have all these powers. You have fear of granting too much power. That is right. The idea is this: all government is subject to misuse, and in this case it is possible that they will misuse the power. Again there is the possibility of using this power rightly or properly. Then it comes down to the question: Can we trust man? The framers of the Constitution placed all the checks they could get. It has been said that, to be effective, it must be enforced on the individual and not on the state. It cannot be enforced on the state but can be on the individual. Hamiliton contended for the unlimited power of taxation. It is most certain that he contended for an income tax. The men who are broad and contend for a unlimited power on the part of the Federal government have come to the front.

Q. by Comm.

"Is the income tax an excise tax?"

A. by Mr. Brown.

That is what was decided in the Springer case."

Q. by Comm.

"In the Pollock case they reversed that decision."

A. by Mr. Brown.

"Yes, that shows the court was devided. I think that Mathews was in favor of an income tax when he admitted that Congress could pass a law such as we propose. I spoke to Joyner about that and he was amazed at Mathew's position.

"I hope you will take home the fact that the income tax amendment as proposed cannot be recalled. It only needs three-fourths of the states to adopt it. If twelve of them dont vote for it the proposition will be up to Massachusetts. I dont speak of it in fear at all, but when our Congressmen pass it by a two-thirds vote and one of them asks one of your committee men to vote against it I am a bit puzzeled."

Q. by Comm.

"Is it not common in case of a referendum for a Congressman to vote that the bill be referred to his constituents?"

A. by Mr. Brown.

"Yes, When once Congress has referred the proposition to the States the question will live whether or not it is ratified."

Q. by Comm.

"The people say this; "of what use is it for me to go up there?" Political ma h nes have a right to controll matters if the people will let them. It is said that the republican party does not want this measure passed."

Q. by Comm.
"Do you think that all income tax measures have been put through as a device to get the tariff bill through?"
A. by Mr. Brown.
"Yes."
Q. by Comm.
"Is this proposition a question of high tariff?"

A. by Mr. Brown.
"No, but the government and the party in power are held responsible for the conditions of the people. This income tax takes the burden off the common people and places them on the shoulders of those who are able to bear them. The people ask that a certain thing be done and the government is going to strive to satisfy the demands of the people. We must level the great fortunes which have been ammassed at the expense of the poor people of this country by means of special privilege, as everyone of them has been ammassed. Taxation should be borne in proportion to the benefits derived from the results of taxation and the ability to bear it, and we cannot get away from these facts. The robbers in New Yorkand other big cities do not amass their fortunes for the benefit of others, but for themselves.

I want the passage of this income tax amendment for the common well fare; to avoid the unatural uprising of the people. The wealth that we are trying to touch now is an intangible thing. Heretofore, when we have looked for wealth we have seen tangible property. Is there any worse form of slavery than that you cannot see? The only way to relieve the situation is to restore the taxing power to the people.

Q. by Mr. Ch. H. Brown.
"Would that do away with the tariff.
A. by Mr. E. G. Brown.
"Yes, because protection is incident to a tariff.
Q. by Mr. C. H. Brown
Why is it the East does not protest as the South and West do?
A. by Mr. E. G. Brown.
Because the big bankers live in N.Y. and other Eastern cities. They themselves are sending out literature against the savings banks, and they tell the poor man to keep his mouth shut or they will deprive him of credit. Therefore, the greatest influence is in the East, the center of capital.
The farmers of the South and West are organizing. They are holding their little meeetings in school houses and chapels, and discussing economics. They have studied this question and think this tax is equitable.

Q. by Mr. C. H. Brown.
Is is because the East will have to pay the larger tax?
A. by Mr. E. J. Brown.
Yes, and why not? Most of the money is in the East. But you cant expect wealthy men to want to give up their money. If a man is connected with a $12,000,000 corporation, he operates in the North, South, and West. All fortunes have flown to the East.
Q. by Mr. C. H. Brown.
Would the South and West derive any advantages that the East would not.

own welfare, but we would be touching the common wellfare. The question is, Is it for the common wellfare to redistribute the wealth of the country. Wherever the income is, get after it and draw your revenue from it.

Q. by Mr. C.H.Brown.

Are the people of Massachusetts paying an income tax as the law provides?

A. by Mr. E. G. Brown.

No, it is a matter of conscience. They conceal it. When you put the tax in the national treasury you cover the whole matter, because if you use the money for local purposes the people go elsewhere.

Speech of Rev. Austin Rice, of Wakefield made before the Committee on Federal Relations. Subject: The proposed Income Tax Amendment.

Chairmen and Gentlemen of the Committee.

"I am in favor the proposed income tax amendment to the Federal Constitution.

The income tax has beentried in many other countries and has been found to furnish a very reasonable source of revenue, fairly distributed among the people. It is conservative measure of taxation, because it makes the burden of taxation far more equitable than any other system yet put in force.

It seems to me that the purpose and result of this amendment would be to restore to the Union the powers which belong to it and which it has long enjoyed. Three of the judges who gave the decision that the government has a right to tax incomes were framers of the constitution. In a later decision of the Supreme Court, by a vote of 5-4, the government was deprived of the privilege, and that was said to approach a national calamity. The passage of this amendment would be simple a restoration of the powers before enjoyed. The last time the government was empowered to tax incomes was in 71, but it is difficult to determine the amount of revenue raised in the two and one-half years in which the tax was in operation.

Several gentlemen have said that they thought this decision limiting the power of taxation to time of emergency parallizes the governments ames, and that that decision was the greatest blow ever struck at the federal government. The situation is not a technical one but is a grave one. In time of war the government had a chance to float a debt. Great Britain, Holland, France, Italy, and Austria enjoy this privilege.

This proposition was advocated by Pres. Taft and had the unanimous vote of the Senate, and the majority in the House of Representatives. Some of those who voted to submit it to the states do not want the measure passed, but we cannot impugn their motives. If this was not such a general movement I would be suspicious of it, but as so many different countries have the power I am sincerely in favor of it. It is difficult to get at those who have large fortunes. They can place their incomes in different states. It is hard for the poor man that he has to bear more of the burden than is due. It seems to me that in the long run it wold be for the business interests of Mass. to support this amendment. If it gets abroad that Massachusetts is a dog in a manger there might be a strong anti corporation movement. Mass. should pay her share in lifting the burdens from the shoulders of the common people. If we can call on the President in time of need now how will we feel when we go before the convention and say that on this matter we did not support him. In the long run our state has borne an excellent reputation in that she has taken a national rather than a local point of view.

MR. WHITFIELD L. TUCK, WINCHESTER.

Mr. Tuck placed the high cost of food stuffs on the Payne-Aldrich Tariff, and said if the Government could derive its revenue from the incomes of the wealthy it would find it unnecessary

come tax has not been properly considered by any one else than Wm. Jennings Bryan. I want to be perfectly sincere in this matter, and I don't want to be personal, because this is not a party question. Every Senator in the United States Senate voted for this Income Tax, and almost every member of the House of Representatives voted for it."

Questioned by the Committee: "Was not that the question of submitting it to the people?" "Yes," answered Mr. Tuck, "but that is nether here nor there. It is not a party matter, but it is a personal matter with me because I am a party man." (Reads letter from Congressman McCall) "That shows that the Democrats stand for this amendment, and I desire to carry out the wishes of the Democrats in Congress."

(Reads speech of Congreeeman Borer. Refers to a message on the Income Tax. Refers to Hughes attitude on the subject and Congressmen Solser's reply to Governor Hughes.

"I hope the old Bay State will ratify this amendment. I realize how difficult it will be for the proposition to pass New England, and I sincerely trust it may pass our House and Senate. Massachusetts is the third state before whom this Amendment has come. Alabama has ratified it, and Georgia has postponed its consideration. I believe the whole country is looking to Massachusetts, and I have heard that the matter is not having proper consideration. This matter is one of great importance. To my single mind, it is plain that the unjust Tariff is the cause of the high cost of living. You might say that the high Tariff question has no place here; but in Washington Congress is discussing the high tariff along with the income tax. I claim it is a part of the bill and was handled in that way, and I hope, gentlemen, that every Democrat will take the advice of the last Democratic caucus at Washington and do his duty in this matter, and I shall be disappointed if one member would vote against it. But, as I said before, it was not a party question, and it was only proper that we read what our Congressmen at Washington are saying about the Income Tax. (Refers to Congressional records of the year 1909, speech of Representative Hall of Tennessee in favor of the proposed amendment.

Second speech Feb.7, 1910.

I have felt all along that this is a general issue. I have spoken to you of the position of our Mass. Congressmen in Washington. McCall is a Cannon man (quotes Congressional record) The thing that is going on now in the United States Senate is the same as that which was going on at the time the amendment passed the Senate. The question of the high cost of living is involved in this proposed amendment. The Payne-Aldrich Tariff is the cause of the present high prices and the question I wish to ask you is, are we going to get any relief on the tariff question? As I said before, I don't want to appear partisan. Our Senators were glad of an opportunity to place this proposition before the people, and I hope you will recommend its adoption to the present legislature. I believe you are going to deal squarely in this matter and report it favorably. This amendment lies entirely with the Senate. It requires twelve states to reject it, but if you do not pass on it favorably it will come before you again; it will return to plague you. We have strong opposition in Mr. McCall and I am opposing him because I do not think he is representing the sentiment of his district.

This is a most important question this legislature will have to consider. Take the lead of Alabama and ratify the amendment. Pay no attention to Gov. Hughes. Follow Pres. Taft and report favorably.

ADDRESS OF VINCENT E. BARNES OF WESTFIELD TO THE LEGISLATIVE COMMITTEE ON FEDERAL RELATIONS. STATE HOUSE, BOSTON, MASS.

Mr. Chairman, and Gentlemen of the Committee:

As a citizen of this Commonwealth, and representing the individual in coming here and advocating the adoption of this proposed amendment, I aver that I am not trying to escape myself, or shield a friend from paying his just share of the nation's taxes; neither am I trying to punish

proposed amendment be adopted, and none of the opponent of this amendment have or dare say the same, but I ask that you adopt it because as far as it goesit is just and does away with the old and unjust system of apportionment of the direct tax to the states, according to the number of their inhabitants, which would make the rate of direct taxation for national use higher in some states than it did in others, which is unjust, but would under the amendment of taxation make the rate uniform in all the states as far as it applies that it does not include all objects of direct taxation is no good ground for rejecting it.

It neither takes away from the states a single object of taxation that they now have a right to tax, nor gives to Congress a single object to tax more than it now has a right to tax, as the opponent of the amendment have falsely claimed, for it reads:-

"Article xvi. The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, with out apportionment among the several states, and without regard to any census or enumeration."

The conduct of the opponents of this proposed amendment is even more offensive and unjust than the conduct of the Jew Money Changers of old, and were so offensive to Christ that he flogged them out of the Temple in his time, and I call attention to their absurd plea that the amendment should contain a time limitation, and a clause of special needs. The answer is, the Congress is the regular authorized body to say in the future, as in the past, when and how much the government's needs are from direct taxes.

To the question I have heard asked, if it would be possible for those subject to an income tax to shift it on to the shoulders of others. The honest answer now is, it would be, for many, for all the trusta and combinations could anticipate it in their expenses and charge more for the goods or services to cover it, but when they had got the toiling masses all, they would have to shell out from their profits, but those conditions may not long continue.

As things are now probably if it were possible, the simplest and most economical way for the congress to secure the necessary revenue for the government wouod be to read into the constitution and enact it into law and have the supreme court sustain it that all direct taxes should be apportionate among the several trusts and combinations doing business within the United States according to their respective incomes, and do away with a multitude of expensive officials and the whole bother of collecting it in any other way.

It has been asked were the members of congress sincere when they proposed this amendment, and did they expect it to be adopted in the states when they proposed it. It matters not if congress was insincere when it did a righteous act and was sorry for it, that is not any good reason for refusing to adopt the amendment, and I for one do not think they were, for Senator Baileysaid in the Senate that while he favored Congress enacting a direct income tax like the one on the Wilson Bill, he would not support a constitutional amendment on the matter and about two years ago a few oth ers and myself made a petition to Congress asking it to propose amendments to the constitution, and among them was an amendment to make all direct taxes for national use uniform in all the states, that might be included with this union. I spent about two weeks trying to interest the members of congress in the matter, but the Republicans and Democrats were alike and refused to interest themselves in it, Senator Gore refused to consider it for a moment, Senator Lodge told me I would never live long enough to see the constitution amended, for congress want in that line of business.

In my opinion congress just proposed the amendment of the constitution to fool the people and use it as a club to pull the legs of the trusta and others who would be subject to taxation under it, and when their legs had been pulled to the proper length they would use their machines

adoption in their home districts, for of what profit would it be to the members of the law trust to throw away a club that would be continually weilded to gather great fees with.

All should recognize that the Congress is our Congress, and that the moneys that it raises are to support our government, and if it is true as is suggested by the moneyed interests that are apparently opposing this amendment that the Congress is extravagant, and wasting our resources, it will be a good thing to get the moneyed interests interested in seeing that better men are sent to Congress, and those who will not waste or make commerce of our resources, and I ask that the proposed amendment to the Federal Constitution be adopted, briefly; first because it is just; secondly because it is patriotic, to contribute our just share to support the Federal government, and more extendedly it is in part based upon the following causes.

Those who seek to escape from contributing from their riches and abundance to the nation's needs have adopted two courses to confuse the people and conceal their ways of doing it, and gain their purposes. The first plan that they have adopted I shall call the Governor Hughes plan, or the open attack upon the amendment based upon foolish and unjust grounds. The second method of attack is the Governor Draper method of attacking it in pantomime, or attacking it in secret and dark ways.

The first method that I shall take up and address myself to, is that advanced by Governor Hughes, of New York, and the foremost reform lawyer in the Republican Party, and the one that carries the greatest influence with him in the party; to him the possessors of vast incomes have turned and appealed to in a way that has caused him to take up their causes to defeat the proposed amendment; his ground upon which he opposes the proposed amendment as I understand them are in substance and briefly these.

1st. The proposed amendment does not exempt incomes derived from the public securities, and, therefore, should be rejected.

2nd. That it does not exempt incomes derived from the public service, and, therefore, should be rejected.

I will take up the first grounds of objection by asking the question; do the buyers of the public securities buy them for patriotic and philanthropic purposes? The honest answer is NO, their only motive is because they are the safest and surest profitable investment they can make, and many of them go abroad where our laws would not affect them, therefore, it is unjust that those so able to contribute to the support of the government should be exempted from contributing to its support in its time of need and then make the laborer pay a tax every time he smokes his pipe.

Why should those who have dealing with the government like the steel trust, the tobacco trust, the beef trust, the flour and cracker trusts, the whisky trust, the transportation combinations, the powder trusts, and all other combinations that make milions out of serving the government be exempted? Therefore it is unjust to exempt those millions of profits that are wrong by combinations from the government, when they are so able to contribute to its support in its time of need, to exempt them is unjust and tax the unfortunate sick every time they use a bottle of cod liver oil or any other foreign drug.

And who else is it that Governor Hughes is so selfishly trying to shield by his plea that those in the government service be exempt from contributing to its support in its time of need? Governor Hughes is a lawyer and he belongs to a combination of lawyers, and its members can be properly be called the law trust, its make and protect every other trust and combination for the

President and most of the members of his cabinet, about four fifths of all the congressmen, the attorney general, and all of his assistants, all of the judges of the courts, and nearly all of the lucrative civil offices in the gift of the Federal government are held by the members of the law trust, and it is the same in the offices of the states, and why is the great cry set up that the incomes derived from the government and state instrumentalities should be exempted, because it is founded in favoritism and not in justice but is for the benefit of all the members of the law trust and their rich friends and clients. The President and his trust friends are trying to legalize these unlawful and oppressive combinations by giving them a federal license or charter so as to legalize and fasten their iron grip upon the people by law.

It is unjust to exempt those who yearly receive their thousands from the government for trifling services from contributing to its support in its time of need, but tax the laborer every time he sweetens his cup of coffee.

Those who attack the amendment to defeat its adoption in pantomime and by secret ways are the most dangerous foes to the amendment, for one knows not all they do.

It is reported that Governor Draper with his barrel of millions, tapped it for political purposes, with an auger so large, that the sound of the gurgling stream that flowed was like the cannon's roar, and its vibrations were felt to the four corners of the state, and yet when there is a proposed amendment to the constitution that will give the government a just way to take in the time of its needs a few drops from that barrel, he sets his silent coopers to work with a noiseless drive, to see that its hoops are made fast, and none of it leaks out to the government, and seeks to defeat its adoption in pantomime, for the constitution provides that it is the duty of the Governor to advise the Legislature upon matters of important legislation, and he sends to the Legislature the proposed amendment in sullen silence, without comment or advise, and I read his pantomime actions as saying, "Take that proposed amendment, go bury it in the legislative potters field of rejection, bury it upwept, unmourned, and unmarked for a resurection morn." As the most dangerous foes to this amendment are those who oppose it in pantomime, and in secret ways, for it is those it is necessary to boldly anticipate and openly meet by arguments.

Probably the opponents of the amendment selected Governor Hughes to do it because he had played the part of the great reformer in the Republican party and has won the confidence of many of the people, and when Governor Hughes made his famous message and announced his great discovery of the defects in the proposed amendment it was but a part of the prearranged plan of the leaders of the Republican party to kill the proposed amendment, and when he announced his great discovery that the proposed amendment was defective in form for it did not exempt the income derived from the securities and the income derived from public service and therefore must be redrafted, this announcement from so learned and respected source fell like a great block of ice upon a rock, and its shock paralized the people and the commercial press seemed to suddenly chill and accept Hughes nonsense as though the fragments of that block of ice had found their way into the editor's office wrapped in the yellow paper of the gold certificate and killed the enthusiasm of the press for the adoption of the proposed amendment.

Why does Governor Hughes and his kind seek to exempt those who loll with the burden of luxury in the lap of wealth from contributing to the support of the government that protects them, in its time of need, and they squander their incomes in seeking foreign pleasures in foreign lands in the company of the gay count, the gallant baron, the noble lord, to feteing and entertaining royalty itself, which is no un-American and offensive to every patriotic American, and make heavier the crown of taxes for the toiling masses? The answer is plain, it is their greed for gold, and like Judas' love of silver, it is so great it blinds their consciences and makes

and may they be shorn of every trust that is reposed in them by the people.

Shame, shame on Governor Hughes and his kind, for they have no justice of patriotism in their hearts, which is so dear to the heart of every true American, and let no member of the Legislature, by hid acts try to make heavier the crown of taxes, for the toiling masses so that Governor Hughes and his friends who loll with the burdens of luxury in the lap of wealth, may escape contributing to the support of the government in its time of need and let not a citizen of this commonwealth have to reproach himself, or bring the blush of shame to his face by having to admit that there was a member of his legislature who was morally so averse to justice, or whose heart was so dead to patriotism, that he voted to reject so just an amendment to the constitution.

Speech of Mr. Robert Luce, of Somerville, Mass. made before the Committee on Federal relations, appointed to consider the proposed income tax amendment to the United States Constitution:

Chairman and gentlemen of the Committee:

Lest the active interest in this matter on the part of the two gentlemen who headed the Democratic ticket in the recent campaign might give it a partisan flavor, permit me to read to you a few sentences from the speech at Denver on the 21st of last Sept., by the most prominent Republican in the country, President Taft. Hesaid, I am most strongly in favor of the adoption by the state of the amendment authorizing Congress to impose an income tax without apportioning it among the states according to their population, and I am strongly in favor of this because in times of great stress if some other calamity were to visit this country, and we should need to strain our resources, the income tax would be one of the essential instruments by which we could collect a large amount of money to enable us to meetthe exigencies."

Scanty attention has been given to the other reason urged by the President in support of this amendment, and yet it is of great importance. He pointed out that by the corporation tax the income from stocks would be indirectly reached, but that there is no constitutional way to reach the income from bonds. If the proposed amendment passes, he said, "It will be possible to add to the corporation tax the feature of imposing a tax on the bonded interest in that corporation by a percentage tax upon the interest to be paid, thus reducing the amount of interest which the corporation would pay to the bond holders to the extent of the tax collected. This would make the corporation tax a more beneficial measure and one reaching interests that ought to be reached."

The total amount of the bended indebtedness of the corporations chartered by Mass. is something more than $400,000,000. Such of the bonds as are held outside the state are more than offset by outside bonds held within the state. Estimate is guess work at best, but it is within the bounds of reason to say that no taxes are paid in respect of one half of this amount, $200,000,000.

One hundred varieties of Mass. Corporation bonds were selling Jan. 1 at a price averaging to yield 4.14 percent to the investor. The average tax rate of our cities and towns for the last three years has been 1.76 per cent. Therefore we are now trying to make the individual bondholder pay an income tax of 42 percent. Therefore we are now trying to make the individual bondholder pay an income tax of 42 %. If the bond is held by a savings bank or trust company, with a five-mill rate of taxation, we get an income tax on it of 12%. Should our state amendment for classification of property prevail and a three-mill rate on intangible property be established, it would mean an income tax on bond holders of 7 %. The United States seeks chance

If it be said that the collection of such a tax is a function of the state rather than the nation, the answer is that Mass. never has performed this function and refuses to perform it. Again and again has the legislature rejected propositions looking thereto. It might be done as Pres. Taft proposes- by having the corporation pay the tax for the bond holders, going to the fountain head as we do in the case of stocks. So it is done in Penn. That method was advised by our special committee on taxtion, which sat in 1907, and heard it approved by so eminent a financier as Pres. Mellin of the New Haven Road. But the advice fell on deaf ears. Apparently the legislature is unwilling to accept any practical method of taxing the holders of $200,000,000 worth of property in the shape of corporation bonds who now contribute nothing in respect thereof to the cost of the government. Are we to say to the United States, we won't tax these men and you shan't.''

Remember that the property represented by those bonds has paid no taxes. The real estate and machinery taxed locally has been deducted in figuring the stock tax, so that the bonds stand for nothing that has been assessed. It goes scott free. You and I give up for taxes a quarter of the income from the real estate in which we invest our savings. We pay an average of $17.60 a thousand on the homes we occupy. But if we bear corporation bonds and don't tell the assessor, not a cent of tax from us. We won't tell the assessor because we won't give up 42 % of our income. Yet most of us would cheerfully give 1 % thereof to Uncle Sam. He needs it. Why not let him have it?

Question by Chairman Farley: Could we report an amendment to this amendment?

Mr. Luce: President Taft has two propositions: For use in emergency, with non use habitually as an income tax, and the taxation of corporation bonds. I could not see how the latter reason would be taken care of.

Chairman Farlay: Do you see any reason why Colorado or any other Western states should not bear her proportional part of taxation as Mass.?

Mr. Luce: Colorado should bear her part of taxation. The money must be raised to support the government. If the wealthier states do not pay their full share the poorer states must pay more than their share. If Mass. would not pay her share Colorado would pay more than her share. The rich states, city or town, is asking the poor state, city or town to pay more than her share of the burden. We want the burden equalized.

The tariff spreads itself about evenly, why should not the income tax. I am not prepared to go further than Taft. I think the government should have power to collect an incometax in case of emergency. The President wants the wealthy corporations to pay the tax. He is asking the little corporations to pay a tax in behalf of its bondholders.

Question by committee: What chance is there to collect a tax on corporation bond holders?

Mr. Luce: There is no way to evade it, and the people are trying to carry out the spirit of the law. I am connected with a corporation in Boston and New York, and I pay a tax on the property in New York, and a tax on the income, and a federal corporation tax, and yet, adding all three together, I can frankly say that I don't pay more than half as much as I ought to; and yet I pay honestly and fairly on the true figures of the Company's books.

Question by the committee: Is there any stipulation as to the amount of the proposed tax?

Mr. Luce: The first proposition was that it should be a 2 % tax; but now it has been reduced

Question by committee: Would Congress assess one part of it without another part?

Mr. Luce: The President does not want an individual tax, he does not want the English tax; he wants to tax corporation bonds.

Question by committee: Is this amendment in line with Taft's program?

Mr. Luce: Taft made the Denver speech before Congress proposed the income tax. Senator McCall voted against the bill because it was not properly phrased also Weeks and Hughes opposed it on this ground. I might also have wished a different phraseology. But it is acceptable to our Pres, our Congressmen and our leaders, and we should not demur here because we want a different phraseology.

Question by committee: Are we able to change it?

Mr. Luce: No, you must either accept or reject it.

Question by Rep. Bean: Don't you think that this measure should be framed differently ? Isn't it too broad? Isn't there danger that it might go further than President Taft's program?

Mr. Luce: Perhaps, had I been in Congress, I should have wanted it changed in form, yet I believe the broad power and the general principle commended themselves to our Representatives in Washington, and to President Taft, and I think it is our duty to support it.

Question by Representative Carr: Don't you think some of the members who voted for this amendment did so in order to get the tariff bill through?

Mr. Luce: I confess I am at a loss to fathom the congressional breast. I know how the vote appears on the surface.

Question by Mr. Carr: Without mentioning any names I will say that some of the Mass. congressmen who voted for this measure are not opposing it. I know one of them has come to me, after voting for it, and asked me to oppose it here.

Mr. Luce: In the same way they have come to me.

Mr. Dean: When you said that Mass. would not tax bonds and wouldn't let the government do so, did you mean to say that we have no tax on bonds ?

Mr. Luce: I didn't intend to say we didn't tax bonds. We refused to collect the tax.

I do not favor the extension of an income tax to a degree that would make it the established system of raising revenue. I am in favor of it as an emergency measure, and particularly that President Taft and the federal government might have the machinery at hand to reach corporation bonds just as they reach the stocks by the new corporation tax law

Question by committee: Was not the stamp tax sufficient in the case of the Spanish War?

Mr. Luce: At the time of the Spanish War there was no strain on our resources.

Question by committee: Is there no reason why the stamp tax should not bring as much revenue as an income tax?

Question by the Chairman Farley: Do you think it is within our province not to report this proposition favorably but append a petition?

Mr. Luce: That would be unprecedented.

Speech of Ex-Sen. H.C. Joyner of Barrington before the committee on Federal Relations. Subject: the Proposed Income Tax Amendment.

Chairman and Gentlemen of the Comm.

"I am in favor of the proposed income tax amendment because it is the only means left the Federal Government to botain money, since the revenue gained from the tariff is as large as is possible to gain. I think that the powe of levying such a tax as is proposed should be given to the Federal Government. Art. 1 of the Constitution gives the U.S. the power to levy taxes, and it had always been supposed it possessed until the Supreme Court, by a majority of only one, said that it had not. That right should be restored. The time might come when it would be necessary that the Government had it just as it was in 1861.

I suppose that this amendment is favored by nine-tenths at least of the whole people of this country;. I suppose it is favored by all democrats because the democratic party has declared in favor of it; I suppose that the Republicans favor it because the greatest republican, Pres. Taft, recommends it; and I suppose every patriotic citizen of the U.S. favors this amendment because its purpose is to restore to the federal government its proper powers, a first atribute of sovereignty to impose a tax such as in proposed. When a divided Supreme Court of the U.S. declared that an income tax could not be imposed as in the Pollock case, it seems to me that by that declaration they take of the right arm of the government, the power of the government to protect its life. It cannot exist without the right totax and except from the fact that the government was supposed to have a righ to exercise that power during the Civil war, Gen. Grant would not have gone to Appotomatax. Soldiers must be paid, supplies and amunitions must be bought. I am in favor of restoring this power to tax incomes to the Federal Government.

Speech of Ex-Senator James H. Vahey, Boston, Mass., made before the Committee on Federal relations, appointed to consider the proposed income tax amendment to the United States Constitution:

Chairman and gentlemen of the Committee:

I suppose the subject of taxation has been one of the most prolific sources of discussion on the part of all nations, and the many different methods of levying taxes are troublesome: but if any nation could reduce taxation to a scientific method, there would be no difficulty in making reforms.

I am not disapointed in that there have not been masses of people in this State House to hear speeches on this subject. It does not mean that there is any great lack of public interest in the proposed income tax amendment. The people of Mass., having had this proposition given to them for debate in the last campaign, heard a great deal about it. Newspapers have taken positions on the proposed amendment and the people themselves have assumed a definite attitude.

The subject before this Committee has, at least in its national aspect, been robbed of all political significance both great national political parties believe, or profess to believe, in the advisability and justice of a national income tax. The Democratic national party has for three years declared

Republican Congressmen in the national Congress representing Mass. Of those nine voted in favor of this proposed amendment; two voted against it, and two did not vote at all. So that nine Republicans members from this State have placed themselves on record, not only as declaring that it is advisable to submit the proposition of an income tax to the people, but in accordance with the requirements of the constitution, and we assume that each member of Congress knows his duty under the Constitution; and the language of the Constitution is, the Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on applications of the legislatures of two thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or other mode of ratification may be proposed by Congress. The three Democratic members of Congress representing Mass. voted in favor of this amendment.

So there can not be any doubt as to the sentiment of our Congressmen, by reason of which the Government has a right to impose a graduated national income tax. Now then a great many others of both parties are in favor of this proposed income tax and the opposition comes from only a certain class of people in the commonwealth of both parties; and it cannot be said that this proposition comes from any one political party.

I am sorry that I did not hear the speeches of our Republican representatives in Congress, who are leaders in their respective districts, weilding great influence, who have failed to come here to say a few words advocating the amendment for which they cast their votes. I am surprised and disappointed in them. They owe it to their constituents to make an explanation of their action. We have a right to hear what they have to say about the matter, since they have thought it of enough importance to vote for it and submit it to the people, in order to grant greater powers to Congress in the future; and our representatives certainly knew that we have on our statute books provision for an income tax.

In the discussion of this question it is unnecessary to extoll the poor or to decry the rich. We need only observe the experience of other governments, the history of legislation such as is here sought, and a comparison with other forms of taxation. Every great political economist, and every noted authority on taxation has laid down the doctrine that the citizens of a nation should pay taxes to suport the government acc ording to their ability. Great Britain, Germany, Japan, Spain, Italy, Switzerland, Denmark, Hungary, The Netherlands, Norway and Sweeden have adopted the income tax. It is true that in a great number of cases the tax was first adopted for emergency purposes, but afterwards it became a fixed principle of taxation. Where is the need of discussing the wisdom of distributing taxation in accordance with the ability of the people to bear it? Can it be true that the ex-patriated patriot of this republic can go abroad, and leave his possessions and wealth to the protection and care of our government, and pay nothing for such protection. It ought to be true that the respect for justice and equality should require the men who receive the most from the protection of our government to pay the most in the way of taxation.

The aggregate wealth of the United States is $120,000,000,000. The governments revenues are nearly all placed on consumption, and the necessities of life, which are consumed by all, are not used in proportion to their ability to pay taxes but according to the necessities of their existence. The income tax rates are easily changed. The proposition works well both in theory and in practice. It is a just distribution and the embodiment of productiveness.

Congressman Hull of Tenn., in a magnificent argument in the U.S. Congress, said, "The chief burden of our indirect taxation falls upon people having incomes of from $1200. to $2000.

would be the injustice in requiring the more than seven hundred and fifty thousand persons with incomes of $3500. and upward to contribute $150,000,000. annually to the governments revenue.

Many years ago a commission on taxation was appointed by the Governor, the chairman of which was a justice of the Superior court of this commonwealth. It found that incomes in Boston were assessed to the aggregate of only $742,000. against $26,000,000 for all intangible personalty, and in other cities of the state to the amount of $880,000 against $65,000,000 for all intangible personal property; and $94,788,000 for all personal property. In other words, the ratio of personal intangible property to incomes in the city of Boston was about as 35 to 1, and in other cities of the state about 60 to 1. Now, nobody believes that these figures are correct. In Great Britain last year an income tax was collected on $5,000,000,000. Tax was collected on $100,000,000 in salaries paid to government officials. Tax was collected on $400,000,000 on incomes of Englishmen living out of England.

I have figures here to show that nobody knows what has been collected in the way of an income tax in this state, but the best figures we can get you that of the total personal property tax, tangible and intangible, only one sixtyeth is on incomes. Any citizen of any town or city in this commonwealth who makes it his business to examine the tax list in his town or city will find this ti be the fact, that the burden of the Mass. income tax bears most heavily upon the physician, the Minister of the Gospel, the lawyer, the merchant, the working man, the schoolteacher, and not upon those who are most able to bear it. The United States is one of only three or four countries of any size that does not have a federal income tax.

Question by Senator Evans: Do you believe that if you were governor you would like to have all the money raised in Mass. spent here

Mr. Vahoy: Certainly. If I were governor I would like to have all the money in the United States spent here, if I could.

Senator Evans: But you advocate having an income tax collected in Mass. and spent by the national government out West.

Mr. Vahoy: I take the view that it is time for Mass. to get rid of the idea that she is isolated from all the other states of the Union.

Senator Evans: Well, the tax collected in England is spent in England. Now you would have a tax collected in Mass. spent in toehr states.

Mr. Vahoy: But England is a monarchy, and Mass. is neither a monarchy nor a republic, but part of a republic. The argument is not a sound one. You might as well say that the money raised in one county of England is spent in some other country. Personally, I believe that it will be a good thing for us to have a little more national spirit, and to have a share in the government.

If I were to go up and down the street preaching the doctrines set forth by a Justice Harlan, James C. Carter, Pres. of the American Bar Association, and Attorney General Richard Olney, I would be accused of spreading socialism. I will quote the dissenting opinion of Justice Harland in the case which decided unconstitutional the income tax passed in President Clevelands second administration. In that case the court, by a vote of five to four, made the most far reaching decision since the Dred-Scott case. I will also quote from the arguments of Mr. Carter and Mr. Olney in favor of the income tax.

Bar Association says, This is a struggle of the rich, in which the poor are driven to the wall. I say this is not a place to extoll the poor ot decry the rich. I am not in accord, however, with these men who are able and aught to bear the burdens of taxation, when they try to befog the issue and raise the cry of state rights.

Let us pass this as an emergency measure, and I have faith that patriotism is too storng to permit us to believe that the national government will ever use this measure to the detriment of Mass. No committee on Beacon Hill this yead id going to have before it a matter of so much consequence as is this matter before you.

Chairman Farley: Could an amentment be placed on this amendment so that the government could use this privilege only in case of war or emergency, and then let the states go on as they do now, leving their own income taxes?

Mr. Vahoy: I am in favor of the present amendment, but I have had considerable experience in this StateHouse, and I know that all legislation is a compromise. I would agree to such an amendment, if that was the best I could get.

Mr. C.H. Brown: How would the imposition of an income tax affect the tariff.?

Mr. Vahoy: It would not destroy the principle of protection, but would provide a safe, scientific and staple means of raising revenues. Ultimately it would tend to reduce duties, because I believe the revenues would not be needed.

Mr. C.H. Brown: Would not it ultimately come out of the pockets of the poor man?

Mr. Vahoy: It would not be possible to put much heavier burdens on the poor man. He is taxed almost to death now. It would hardly be likely that a landlord would have the temerity to raise his rent because he had to pay an income tax.

Mr. Carr: In England the governments expenses are borne by tax on incomes. Here they are borne in other ways. Why, then, should we have an income tax?

Mr. Vahoy: We want to change the system so that the burdens will be shifted.

Mr. Carr: But you say the poor man pays the bulk of the taxes.

Mr. Vahoy: We want to fix it so that he will not have to and equalize things

Speech of Mr. John T. Wheelright, made before the committee on Federal relations. Subject, The Proposed Income Tax Amendment.

I have come here to make the practical statement that the states need the money that can be raised by an income tax and the nation does not. If the federal government gets this money it will lead to wastes and extravagances, but the states would not waste the money they would raise for their own use.

Th It seems to me that this is a practical matter. We know it is a difficult matter for this state to take care fo her own interests . I object to the federal income tax, unless it acts as a substitute. It will necessarily be plus, and we know there will be the more money for Uncle Sam to spend. As we have watched the national expenditures increase, the money going into

to decrease the supply of fuel. Our tax law is not fair. The rich man escapes taxation on the very things on which his neighbors pay taxes. A man with $2000 income consumes it all, but the $50,000 man does not. Our government does not propose to reduce the cost of labor, but to build war ships and grant pensions.

Question by Committee: President Taft says he wants to tax corporation bonds.

Mr. Wheelright: He is only the servant of the people.

Question by Committee: Do you believe that under this amendment one section of the country would be taxed more than another?

Mr. Wheelright: I think it would necessarily follow The Supreme Court decided that if it is not apportioned among several states it is unconstitutional . This has to be an equitable tax on all people who come up to a certain status. A $50,000 man would come under a certain status, and a $2000 man would come under another. The states need the money and the government does not.

SPEECH BY MR. FREDERIC J. MACLEOD, BOSTON, MASS. SUBJECT THE PROPOSED INCOME TAX AMENDMENT.

Chairman and Gentlemen of the Committee:

It is unnecessary at this stage of the hearing to enter into any extended argument in regard to the merits of an income tax . The whole current of expert authority is practically unanimous in regarding such a form of taxation as the most equitable that can be devised. This expert academic opinion issubstantiated by the experience of other enlightened governments, which have adopted this form of taxation. An income tax, therefore is not only proper in theory but has proved of practical operation to be readily workable and easily and economically administered.

The objections to the income tax are not directed, as they cannot be directed, against the principle of such taxation. It is claimed however, that the right to levy an income tax should be reserved to the state, and not given over to the Federal Government. The question of the distribution of the taxing authority between a federal and state government is one of far reaching importance. In determining this question experts are agreed that the principle, if not the controlling, factor should be administrative efficiency. In other words, such forms of taxation as can be most readily and efficiently collected by the local and state governments should be reserved to them, while such forms of taxation as can be best and most effectively administered under federal authority should be levied by the national government. Leading economists and writers on taxation have pointed out that the taxation of real estate and tangible property generally can be best effected through the local authorities. On the other hand, experience has shown that any attempt to collect an income tax by state government has proved just as it has proved in Mass., to be little more than a farce. This is due mainly to the fact that many of the most wealthy man whom it is designed to reach through this form of taxation derive their income from investments outside of their own state and are apt to escape taxation altogether from that source. Another factor is the possibility of illicit compromise between the individual and the local taxing authority.

An income tax administered by the federal government would not be vitiated in the same way by local influences, and would be able to reach incomes from whatever source derived.

stress the national government has not tried to reach incomes derived from that source, nor is there is there any disposition or exprest intention on the part of those who favor an income tax that it would be so applied. The purpose of the act is primarily to controll men of wealth who have escaped taxation on their personal property to make some just contribution to the government, a tax based on their income. Under our present system of taxation the taxes based upon consumption, while all the money which is hoarded practically escapes taxation. On the basis of consumption the rich and poor stand, broadly speaking upon a new quality, so that a tax based upon consumption draws almost as much from the poor man as from the rich.

The theory that taxes should be proportioned to wealth and ability to pay is fundamental, but under the existing system this theory is not applied. The purpose of the income tax is to redress this injustice, and to make those who have a large financial stake in the community, and who have accumulated wealth through the protection of the government, to pay a just and equitable share for the favors they have received. The land and naval forces of the United States and courts of justice, and other federal agencies, are supported primarily for the protection of property. If therefore, the objection is raised that under an income tax Massachusetts would contribute more to the federal government than the State of Oklahoma, for example, it must be because that in proportion as the citizens of Mass. are more wealthy and prosperous than those of her sister states. But id Massachusetts has a greater amount of wealth which is protected at the expense of the federal government, it is just that it should pay a larger proportion for the protection received. Any other system would be fundamentally dishonest and unjust, and it is a curious kind of state loyalty , as well as of morality, to encourage any citizen of the United States in evading his just obligations to the federal government merely because he is our fellow citizen in Massachusetts.

It is also asserted that the income tax amendment would permit of the taxation of income derived from state bonds, and to that extent would encroach upon the sovereignty of the individual state. It is to be observed, however, that the tax proposed would not be levied directly upon the state bonds, but only upon the income derived from that source, as well as from other sources, by the individual bond holders. Even if this should be the result, the objection would not be strong enough to outweigh the other advantages of the act.

I, personally, believe it would have been better if a specific exemption had been made to cover this matter, but it was evidently thought best to have the grant of federal power made in the simplest and broadest terms possible. There seems to be a curious misconception on the part of many people that this constitutional amendment is equivalent to the adoption of an act authorizing taxation upon the same terms. Nothing however, could be further from the facts. Thw whole matter within the area prescribed is wothin the discretion of Congress to make such limitations and exeptions as seemed to it to be just and wise. I do not believe there is any one who really believes that Congress would stretch its powers so far as to tax even indirectly state bonds, or other attributes of state sovereignty. The members of Congress represent their individual states, and there is not, I believe a single state in the Union that would desire to have its own bonds subject to any form of taxation from the federal government. It is manifestly absurd to suppose that, with the adoption of this amendment, members of Congress are going to part with their intelligence and common sense, and are going to take any action counter to the wishes of all the states. This objection seems to me to be an artificial bogie and not in any sense a danger which we may reasonably apprehend.

Assuming that Congress would impose an income tax that would tax personal securities we all know how Massachusetts bonds are used. Many men could enter State St. on the day before the assessment is levied and buy a State bond. They hold them for a day or two and then they are enabled to say that they have no taxable personal property. After that they sell the bonds

As Chairman of the Democratic State Committee, I shall endeavor to have that party appeal to the popular tastes. If there are those in the Party who do not hold the same views, why then they can get out. It will be reorganization on the lines of exclusion, as well as inclusion.

Question by Committee: You don't think this is a party measure do you?

Mr. McLeod: Well I hope not. But I am waiting to see what the Senators and Congressmen will do to carry out their pleasures. The Democratic Party has long held the income tax as one of its corner stones.

Question by Committee: Do you think the Democratic Party is wedded to this position?

Mr. MacLeod: The party of one accord is for this amendment.

Question by Committee: Did you know that the Wilson Bill exempted corporation bonds?

Mr. MacLeod: Yes, but the Wilson Bill was held to be unconstitutional on other grounds, so that matter has nothing to do with the Wilson Bill.

Question by Committee: Taft wants this income tax only in case of emergency.

Mr. MacLeod: You give the government power to levy this tax as they see fit. I don't think it should be limited to emergencys. It is economical and in line with the best expert opinion, and it should be utilized in time of war and peace.

Question by Committee: If Congress does not levy this tax according to the provisions of the amendment , it will be unconstitutional.

Mr. MacLeod: I don't think there will be any question as to this.

Capt. Connor, Retired, English Army.

The question at issue here today is whether the State of Massachusetts will vote aye or nay for an income tax.

The question has been raised here that it would not be well to grant the national government power to levy this tax, and thus deprive the State of the means of levying it for internal revenue.

If the State declines to come forward and aid the national government in levying taxes for the support of the army, navy civil services, then no citizen of Massachusetts has any right to demand from the national government aid to build harbors, keep docks and navy yards and build frts to protect the seaports, or even to pay its Civil War veterans; which services as here out lined are paid for largely by the Middle, Southern and Western States also favor an income tax.

The question arises then why are we here at all. Can any one answer that question? It is simply because of the anarchial decision of some Judge. In this country which would be tolerated in no other constitutionally governed country in the world, Judges (State and Federal) interfere in political questions ; which is tending daily to an anarchistic condition. The decision of Justice Toney precipitated the Civil War--''that a black man had no rights which a white man was

When will the people wake up to the fact that the Judges are the arbitrary rulers of this country and that the Congress, Legislature and the Juries are mere jokes --expensive playthings paid for by the citizens under the delusion that this is a representative form of government. Just as you saw the other day a Federal Judge fine Standard Oil $29,000,000. and another Federal Judges passing reverse it. There was no law authority for that decision, neither was there any law authority to declare the income tax unconstitutional. Now I am a thorough believer that order is Heaven's first law. I also believe with Emerson that the world was built in order and the atoms march in tune. Now these decisions and others have been heralded through the nation and the man who creates all the wealth, the farmer and the laborer, are sitting up and thinking; and the result we see now is one of these cydonic outbursts against the robbery and rapacity of the meat trusts, who through the tariff are charging the people twice as much as could he were there free competition for one of the prime necessaries. Yet this same trust and others like it, after skinning the people, declines to pay an income tax; though the working people keep them and increase their profits by robbing themselves. This instability in judicial decisions is creating an anarchial spirit. The people say this may be a republic but it is not a democracy, and turning over to Canada, they discover that neither the Dominion nor the Provinces permits its judges to act out of the legislative bodies. When a statute has been enacted it is known to be the law of the land until it is repealed. This naturally imparts to Canadian civilization a security and stability which the United States has not yet attained.

Perhaps now you can understand how there is such an uprising amongst the masses. They say ''We neither want favors nor charity, but justice.'' When the judges say a thing how are you going to change it ? But then, these great crimes do some good; they have awakened more people to the enormity of present conditions and made more Socialists than anything that has happened for years, - just as the killing of John Brown made more Abolitionists.

But then every society has sooner or later responded to any sentiment planted in the minds of its members when that sentiment gained enough adherents. The meanness of the rich when they want to avoid their obligations is so despicable that is is not alone contemptible,-but astounding in its audacity. Here they are about six percent of the state, owning ninety four per cent of the wealth , tell the ninety four per cent of the people who make all the wealth, who pay all the taxes by rents and labor- for these people do not produce a potato- and who would have to do all the fighting - that by their money influence in the Legislature they will not pay their quota of just taxation, but that you the Common People thorugh customs and revenue, must meet all the expenses of the national government.

Now the West and South who favor this income tax say- here is the lawyer- we feed and clothe these paupers, we borrow the money they made out of rum and niggers and we pay them usurious interest therefor, and are we who keep these plutocrats of the East going to be saddled with all this additional expense of a community who produces nothing but granite, ice, and fish, and would starve in twenty four hours but for us. I trow not, There immediately comes up to their minds the following reflection on the French Revolution. An immense portion of the population of France was suffering from that operation of oppressions and exactions; violations and evations of the law by the rich and fashionable often took place, faction and sedition were rife ; commerce and production were stationary in the nation, and petitions for a reduction of unjust taxation, the suppression of guilty collusion and abolition of iniquitous laws were looked upon as occasions of derision. Apply these words to present day conditions in this great country

The point of the matter is this: The American wants to get an education with the knowledge and business of his own government. He is suffering from the most outrageous fiscal oppression and he is now ready to run any one who comes between him and the alleviation of his

He is losing his independence, fearful of the injury the capitalists who monopolize banks and manufacturies may do him. He is becoming servile or going on m tramp, He is now getting into that condition into which the Spanish and Italian peasantry, from which the Irish and English peasantry are being emancipated under new economic conditions, that of a white nigger, A servile people are a dissatisfied people, and you have today more murderers in this nation than all the other countries of the globe. Scarcely a day you do not read of the suicide of a young man, young woman, middle aged or old, because they are either starving or out of work. All because of unjust economic conditions, and their blood rests upon the heads of those who will perpetuate this system and will not ease the pressure from their necks which is become unbearable.

But no one can deliver the American but himself. He evidently has got the part suited to his mental and moral capacity and until he organizes, combines and co-operates in some manner different to what he is doing at present I see no way out of the present tangle in which he has got himself.

Yet they never fail who die in a great cause, and as it is words, not deeds, that govern this world, I would say words or things, and a small drop of ink falling like dew upon a thought produces that which makes thousands and perhaps millions think. Therefore do I hope that this great nation who fifty years ago was an inspiration to all mankind to stimulate men to do and dare for freedom, may again take her place in the front ranks of the human family as an incentive to strive for the good, the beautiful and the true.

SPEECH OF MR. EUGENE N. FOSS, MADE BEFORE THE COMMITTEE ON FEDERAL RELATIONS. SUBJECT THE PROPOSDSINCOME TAX AMENDMENT.

Chairman and Gentlemen of the Committee: I want to say just a few words on this income tax question. I am still a Republican, and want to support this amendment, proposed by a Republican president and presumably sanctioned by a Republican Senate and House. I understand that a Republican representative has approached one member of this Committee and urged him to use his influence against this measure. I was told by a Republican Representative last year that he was opposed to the income tax although he voted for it. He was afraid that Mass. would have to pay more than Mississippi, but I told him Massachusetts should pay more than Mississippi. We would not be surprised after the issue is out of the way to see our Representatives on the floor of the House under their true colors. We have seen Senator Lodge and others on the stump standing for a revision of the tariff downward but when they got on the floor they denied that they had promised to revoide the tariff downward. There has not been a Republican Convention within my time when everything was not cut and dried years before. And you could not get anything unless you bowed to the powers . I found that out myself six years ago.

It has been said that some are against the income tax because Massachusetts would have to pay more than some other States. Well isn't that right? If we have the wealth why shouldn't we pay more taxes? We want to pay what we should; we want to bear our share of the national financial burden. The wealth of Massachusetts is largely attributable to favorable national legislation, and why should we not pay our share? We are now a world power. We have acquired Colonial possessions, we are building the Panama Canal and we are deepening harbors and water ways, maintaining an army and navy. Why shouldn't Massachusetts pay her share of these expenses?

I am in favor of the income tax because I think that it woud reduce the tariff taxes. The laboring people are taxed to death. They are literally taxed from the cradle to the grave. I have

Massachusetts will never have industrial relief until the tariff charges are reduced. Our wharf property, now worth fifty cents per square foot, should be worth Five Dollars. You will never have any relief, you will never have real estate in Boston worth any where near what it should be worth, and your industries will not devleop materially until the tariff rates to Canada are cut.

Question by Comm.
How would this income tax reduce the tariff?
A. by Mr. Foss.
We have got to have so much money to run the government and if a part of it comes from the income tax, then so much less will have to be raised by the tariff."
Q. by Comm.
"Wouldn't it be better, supposing we could get at the men with the money, to let this state raise the money and spend it itself?" In times of national need we could come to the federal government's need
A. by Mr. Foss.
"No, I cannot agree with that view. It is a little selfish. Our states are banded together and the strong should help the weak."

I believe that we have passed the last hard tariff that we shall have. We have great industries, and the people will demand that the trade relations be changed with all countries of the world by means of reciprocity.
Q. by Comm.
"Do you not think that the proposed income tax would impose a burden on some people who should not have to bear it, state officials and others."
A. by Mr. Foss.
"Yes, let those whom it is most desired to get at are the men who are spending all day at some wealthy club, doing nothing to benefit the city, state or nation, and able to live luxiously on incomes derived from ancestors."
Q. by Comm.
I suppose that it would be a double burden to you, as you pay an income tax to the state now, don't you?"
A. by Mr. Foss.
Well, I pay my personal tax bills, but I do not remember ever having paid an income tax.
Q. by Mr. Lockwood.
"I presume that you are right like a good many others among us; you do not run to the assessors and ask them to increase your taxes.
A. by Mr. Foss.
No, I dont, I am humane lime most of us, I suppose. However I am willing to pay my share of the taxes and do not care to dodge them.
I am glad to see some gentlemen like speaker Walker with the sand to come out and tell what the trouble really is here in Massachusetts and all over the country.

The people have lost confidence in the republican party and we are going to see an overturn. This is deserved because of the action of the leaders. The peolple have been fooled too often. This conversion to the income tax on my part is not recent; four or five years ago I came out for the income tax. I have been in favor of it because it is a just and equitable form of taxation, and it would help to reduce the tariff. I have read with much care Gov. Hughe's speech and know his position, and I cannot agree with him that the proposition should be defeated for the reasons he gives. They are, tht it will affect the several states in their modes of raising money; that is, if municipal bonds are taxed the cities will not be able to sell their bonds.

I cannot disucss the constitutional phase of this amendment. I am talking about the way to get at the man who is rich. The contest in England at the present time is about the same as that in this country. They are trying to have the land owner there to cintribute to the support of the government. We are trying to get at those men here who are not paying their proportion of the taxes. I was surprised to see a long editorial in the Boston Transcript advising us to go slow in this matter, and to let the West take the initiative. I was chagrined and astonished that the Transcript should take that position. Massachusetts is looked to as one of the leading states of the Union, and she should plant herself right on this proposed amendment. Again, Massachusetts has been exceptionally fortunate in receiving favors from the federal government, and she should be willing to contribute her share to the federal government. This is a great nation; we are demanding more money for our harbors, water-ways, and we are building the Panama canal. There is a revolution going on; our government must have more money and she has got to get it in thebest way she can, and our rich people should contribute according to their ability. As I said before, our great wealth here in Massachusetts is the result of favorable legislation in Washington.

If this income tax amendment would pass, it would help to reduce the tariff tax, and that is what the people want. The expenses of the man whose salary is from $2,000 to $5,000 per year are just as great as those of the man whose income is $15,000, and the tariff tax is the same. We want our industries to go forward, and they must be as unhampered as is possible, that is, our raw materials and foods stuffs etc, and we must hve the broadest possible markets. We must have those conditions, and we will never have them until the burden of taxation has been reduced or our tariff is removed. We want free and unrestricted trade. Now, I am not talking about annexation; though that would be very valuable and would open up all the resources of the country annexed.

Q. by Comm.
You say it would probably reduce the selling price on bonds. Who would have to pay the difference, the man who buys them?

A. by Mr. Foss.
It all comes out of the people. No wealth is created except by labor.

Q. by Comm.
Don't you believe that Congress would tax tangible before intangible property?

A. by Mr. Foss.
Our representatives might exclude bonds. I am not prepared to say just what course they would persue.

Q. by Comm.
Don't you think the government would spend all the money we would give them?

A. by Mr. Foss.
No, I think our representatives our trustworthy. They would spend it judiciously. However, the government has assumed certain responsibilities, and I believe it should be more economical.

Q. by Comm.
"If Congress should place the tax first upon tangible property, wouldn't that increase the burdens of the people?"
A. by Mr. Foss.
"No, but I am not prepared to say just what Congress would do. We cannot tell from the

increase."
A. by Mr. Foss.
"Yes, we cannot avoidthat. It is the temper of the times. However, I believe that the the fiscal policy of this country will change. We are the greatest manufacturers in the world; we can compete in all staple commodities, and people will continue to demand that all the markets of the world shall be opened up; and the only way to do that is to open up our markets to the same extent that we ask of others countries."
Q. by Comm.
"But isnt that coming about regardless of the income tax?"
A. by Mr. Foss.
"Yes, but I think there is a strong demand for it."
Q. by someone in the audience.
"Don't you think that tax would first be laid on intangible property?"
A. by Mr. Foss.
"Yes, I agree with you."
Q. by Comm.
"Don't you think this bill is too broad?Don't you think we should have been given some idea as to what we should expect? What do you think about that?"
A. by Mr. Foss.
"Pres. Taft thinks the government has a right to pass an income tax. Personally I should have liked to have seen Congress pass the bill and put it up to the Supreme Court. I admit that the amendment is indifinite and that Gov. Hughes is right andhis opinion should be given much consideration as that of an honest man, and the opposition is due to the fact that the bill is too broad. What troubles me, as a citizen, is that we are not collecting from the man who should pay what he should pay. The people feel that they are not being treated right."
It is the inheritance of the income tax that appealed to me.

Speech of Mr. James S. Murphy, of Boston, before the Committee on Federal Relations. Subject: The proposed Income Tax Amendment.

Chairman and Gentlemen of the Comm:

"Much reference has been made to the income tax as applied in England. The phisicial differences between England and America would make possible things there which would not be possible here. In a newly worked out system to cover the wole U.S. mistakes would be possible which would not be possible in a smaller community, as in England. One of the great factors in the increased cost of living is the increased cost of doing business, and this is largely due to increased legislation. It is the little fellow who gets hurt, and not the big fellow, by your legislation. In fact you cant hurt the big fellow, but when you pass laws like this it the little fellow you hit. We can do our big busines on a margin of 4% and do a magnifience business, but what will happen to the little fellow in such a case. He will die, he is dying today by inches. The government does not pay its debts; the cities do, the states do. If you have a claim against the government you have got to fight all the time. The little fellow cant fight. Now all business done by the government at arms length is done by clerks, and this will lead to a system of red tape which will defeat the purpose of this tax. Now we need this money at home. We can spend it to better advantge than the government can. If the government is spending it extravagently we ought not to give them more. Should not this tax be saved for emergency purposes, and is there any better method of saving this tax than by the people who have always been ready to respond to the government's call in time of need? The U.S. can collect eough taxes in its ordinary way to pay its ordinary expenses

ed of a fair share of the burden is showing a very narrow mentality."

Q. by Mr. Robinson
"Why did the Mass. Congressmen support this measure, if it is so bad?"

Q. by Mr. Murphy.
"I know a prominent Republican Congressmen who said he would give out an interview in the morning papers, and when the interview appeared it was diametrically opposed to what he said the night before. It is possible that some of the Congressmen voted for this measure to get the tariff bill through.

Returning to the income tax in England. You must remember what a great country we really are. Why,Englands longest distance from North to South is only 350 miles. Gentlemen, there they think in hundreds of miles, not in thousands. Once there went out an order from Washington that druggists must label all articles within thirty days. He had never been in a wholesale house where it would have required two years in some cases to label the articles referred to. The order was rescinded and they were given three years.

Now the issue to the business man is, the nearer you can come to the settlement of a question in his own home the more profitable it is to him.

If our state income tax is not collected we should collect it. Each year we are spending more money. When they ask for this extraordinary tax there must be extraordinary extravagence. I know just how it is in the Legislature; it is hard to say no. If a person askes for a thing long enough he convinces some people that there is some public demand for it. Our western people are the ones who are most insistent in the passage of this amendment. Sen Borah distributes his speeches on the income tax amendment, throughout Idaho, Where Idaho distributes ten cents Mass. distributes dollars. Ours is an expensive government and we should be more economical. The U.S. is spending much money, but it is now almost a trueism, they will spend as much as they can get, and they wont have any more surpluses. Legislators feel that every cent must be spent. What would a business man do on a basis like this? A cotton mill failed here a few years ago, and the peolpe said the mills would have to go south; the directors got togetherand built up a large business. They have made more money in the last four years than everbefore. Is it not necessary to take a leaf from every day business. Massachusetts and Boston are spending more money than ever before, and they are spending money collecting taxes to prevent a deficiency.

A certain gentleman has said to you, if I was governor I would like to have every cent collected in Mass. spent in Mass. That is the key note of the whole business. Can we have some richer community pay our expenses in the national government? Every family has its sickness, and every family needs a reserve fund, and a good house wife usually sees that the family saves money. The time will come when we will have war. It will require money. Our Civil war required men, and even money was needed then. What are we up against now? We are up against the fact that the nations that win in war from this time forth is the nation that has the most money, the nation that has the best instruments for killing; and unless we have those millions where shall we be? If that time should come it would not be Idaho or Nevado who would furnish the sinews necessary but the states of the East.

Q. by Mr. Robinson.
"Do you think our government is collecting enough from general revenue?"
A. by Mr. Murphy.
"Yes, Gen Grant said that the pension list would be highest ten years after the war. Forty

Speech of Joseph T. Carr of Malden made before the Committee on Federal Relations. Subject: the proposed Income Tax Amendment.

Chairman and Gentlemen of the Committee:

"I am an Alderman and member of the Finance Comm. and have long been a student of finance.

We have had some agitation as to the three-mill taxation. We believe that something will have to be done in regard to the mode of assessing taxes on personal property, though we do not believe in the adoption of this amendment because it would be an ingringement upon the rights of the State of Mass. to levy a tax of its own on bonds and other state investments. The state should levy an income tax of its own, and there should be a state tax on incomes from bonds not to exceed ten percent.

I am fair about this thing. Malden has about $10,000,000 in personal property, $8,000,000 in intangible property. The income derived from personal estate is at the rate of $1.57 per thousand. In the report of the Commission on Taxation, 1908, you will find that theythink there is as much personal property in Mass. as real estate. If this was all taxed the rate would be out in tow because the value of the whole state is $3,000,000,000. What we want is a tax on mortgages, such as Penn. has. The time will come when we will be obliged to take up the matter of an income tax in Mass.. I believe in an income tax for Massachusetts. There is no necessity for an income tax levied by the U.S. This quesion was submitted to us as a compromise in Congress, in order to pass the tariff measure. The East claims that if this measure goes through there will be a great revolution. If our tariff tax should be removed and the imports would come in free a panic would ensue. There is no limitations to how far Congress would go if this amendment should be adopted. If they desired to break up the protective tariff let them add enough to the income tax to wipe it out of existence. I want to apply this proposition in a practical way. You have been told why it is not uniform. you must remember the conditions of the country at the time the Constitution was framed. Every state then had an import duty different from every other state.

We can enact a law in such a way as to tax every bond so the the man holding it will not know that he is being taxed. You should study the operation of the tax on mortgages in Penn. The treasurer of every corporation has to pay the state or county treasurer a tax of $4 per thousand on every bond. I cannot see why we should not pay an income tax on mortgages. The Savings Banks of Mass. are taxed on mortgages; why shouldn't we tax others. It has proven to be an easy matter to collect an income tax through the treasurer of a corporation. We can pass a law that will compel the treasurer of the corporation to come to the state treasurer every year and pay this income tax. The tax would not be so great of course.

All I can say is that I hope that you will not give to the Federal Government a right which the state should reserve to herself, especially when there is no necessity for it.

During the Spanish War a stamp act was passed, of course that was only a little war and did not tax our resources. What an emergency meansin this case is a deficiency in the U.S. Treasury. The peolpl are in an uncertain state and want to know what to depend upon. We should like to have an effective state income tax and we should like to know some way to collect it. Pres. Taft wants a tax levied on the bonds of corporations, but we dont know to what extent we might be taxed. If this amendment should be adopted it would remain forever. I dont believe in it.

Q. by Mr. Curtiss.

"Speaking of taxing bonds. The bonds represent real estate. Do you think they should be taxed?

A. by Mr. Carr.

"I would tax the income on the bonds. I don't believe they should pay $17.60 on the thou-

"To whom should that be paid."
A. by Mr. Carr.
"I believe it should be distributed.

I do not believe in a tax of 4% of a thousand dollar bondsuch as we have, because it is taxing too much of the income from the bond. I dont want the bond to be taxed as the real estate is taxed. If every bond in Mass. was taxed the taxes would come down from $17.60 to $8.

Speech of Mr,Joseph E. Woods of Boston made before the Committee on Federal Relations. Subject: the proposed Income Tax Amendment.

"The exemption of Massachusetts bonds from taxation at once raises a premium on them, sohthat they yeild for about 3.05. If an income tax is levied, the bonds of Massachusetts will be impaired in value. Whatever sum is raised by means of an income tax will practically come out of the state. Congress, once having the power under this proposition, may levy oone percent or ten percent as it sees fit.
Q. by Mr. Brown.
"Would this amendment affect the sale of Massachusetts State Bonds?"
A. by Mr. Woods.
"Yes, investment in state bonds would be stopped if they should be subject to an additional tax. If other investments could be found the people who had trust estates would put their money there."
Q. by Mr. Robinson.
"Why should not the holder of bonds pay an income tax."
A. by Mr. Woods.
"Why should you pay ten cents for sugar when you can get it for five? Why should one buy money at a high rate when he can get it at a low rate?

If Congress should impose this tax "from whatever source derived it would impair the credit of the State of Mass. State bonds bear interest at 3½, and the net proceeds should yeild a net 305. If you give Congress this power you subtract that amount from the revenue of those bonds and the state gets less, and the investors will not buy the bonds that yeild less than 305.

Q. by Comm.
"You don't agree with the report of the message of Gov. Folk that the Federal Government would have no power under this amendment to tax another tax."
A. by Mr. Woods.
"I have not read Gov. Folk's message. I agree with Gov. Hughes. He recommends to the N.Y. Legislature that they do not recommend this amendment, and some Congressmen have criticised them for getting out of his promise as Governor."
Q. by Comm.
"Of course the bonds have to be bought somewhere but the fact that the Federal Government having this power does not mean that it would necessarily tax state bonds."
A. by Mr. Woods.
"I think it would necessarily follow, and our forefathers were wise to with hold this power from Congress, and it would be very unwise for this legislature to grant it now. I am strongly opposed to the proposed income tax proposition.

Speech of GamaliellBradford before the Committee on Federal Relations. Subject: The proposed Income Tax Amendment.

an iniquitious measure as this I am through with them. I have left the democratic party and have no further use for it."

"I tell you gentlemen, the Federal power is encroaching upon the states every day that military bill with power over State militia will lead to Military conscription. All that protects us is that little Constitution, and we have got to stick to that. Why, at this time when we dont need the income, do we go in to abolish the Constitution? The money power lies at the root of the whole matter. The most momentous question to meet is that the representatives of some of the states are willing to turn their states over to the Federal Government. Have Sen. Lodge and Sen. Crane come out in favor of this tax? Nobody dares to oppose it openly. It is too much power for the Federal Government. It is easy to reach the rich man if the state would only pass the necessary laws and then fine the rich man if he would not obey them. There is something wrong in Congress when representatives of the several states deliberatly vote away the rights of the states. Q. by E. Jerry Brown.

"Was not Jefferson a Democrat, and did he not favor an income tax?"

A. by Mr. Bradford.

"If Jefferson advocated an income tax he got away from the Constitution."

The income tax has been declared unconstitutional. This amendment abolishes the restriction that no additional tax shall be imposed according to numbers. It is not possible to get at all the incomes by proportionment. One vote declared the law unconstitutional, and now you seek to destroy the Constitution. All that makes us a nation instead of forty-six different states is our Federal Constitution. One gentleman has asked how can you tax states out of existence? If you go into some states you ont find any incomes that could be taxed under this proposed amendment, but when you come to Massachusetts under this act you would tax one half the population, and that is the way a state out of existence.

Speech of Mr. Henry Winn of Malden before the Committee on Federal Relations. Subject, the proposed Income Tax Amendment to the Federal Constitution.

Chairman and Gentlemen of the Committee.

I am a believer in an Income Tax; such an income tax as was levied by the Federal Government in the Civil War. This proposition authorizes an Income Tax different from the one whch the Supreme Court of the United States threw out, and the power that it gives to Congress is of such a nature that I think this resolution should be defeated; but I think you should pass a resolution instructing your representives in Congress to frame a resolution somewhat like this, but in such form that it would pass.

I was interested enough in the subject in October to write an article. It was taken by a reporter who wanted it for certain purposes, and it was published in the Hartford Globe and another paper on the 26th of December, ten days before Gov. Hughes' message to the New York Legislature. This is an article in the Republican:

It was from about the first seemed to me that the Income Tax resolution for an amendment to the Constitution submitted by Congress to the states was drawn in a form to secure its defeat. Its paternity was among its enemies. It reads thus: Art. 16 "The Congress shall have power to lay and collect taxes on incomes from whatever source derived." The words "from whatever source derived", give expressed power to the Federal Government to tax income derived from the agencies of state governments. It may evidently tax the salaries of our judiciary and state officers. Chief Justice Marshall, in McCulloch against Maryland, decided that the states could

on state bank note issues drove them out of existence.

Conversely the United States Supreme Court held that Congress could not tax the salary of the Massachusetts probate judge, Day of Barnstable, for similar reasons, as it might interfere with agencies of the state. (Collector against Day 11 Wallace 113). In each case the basis of the decision was not that the constitution expressly prohibited states from taxing United States bonds, or Congress from taxing salaries of state judges, but that as the two governments were distinct it followed, in the absence of express provision, by necessary implication, that neither could tax the agencies of the other. But the constitution of the United States is a supreme law of the land, and where a power is expressly given by it to Congress no implication can take it away, even if it be to obliterate state line. And what can be more emphatically clear than that the power proposed to tax incomes "from whatever source derived" is an expressed power to tax all incomes, including those derived from state instrumentalities? The rule of construction is: "If the words carry a definite meaning which involves no absurdity, nor a y contradiction of other parts of the instrument, then that meaning on the face of ths instrument must be accepted and neither the courts nor the Legislatures have the right to add to it, or take from it". (Lake company against Rollins, 130 U.S. 670). Here there can be no contradiction with other parts of the instrument for the later amendment would supercede an earlier provision.

Justice Nelson, in the above decision as to taxing the salary of Judge Day, after refering to the provision that the powers not delegated to the United States are reserved for the states, adds: "The government of the United States therefore can claim no powers not granted to it by the constitution, and the powers actually granted must be such as are expressly given, or given by necessary implication",—a negative recognition that if, as now proposed, the power to tax state salaries were expressly given, it would be valid. A minority of the court held that even now such a tax would lie. Will it not plainly be effedtual if the constitution shall provide for taxing incomes "from whatever source derived"?

Must the tax be uniform? The federal constitution provides: "The United States shall have power to levy and collect taxes, duties, imposts and excises. . .but all duties, imposts and excises shall be uniform throughout the United States". A "tax" is not an "impost", ordinarily, though the world "impost" is sometimes used to cover taxes. It may be claimed that the omission of the word "taxes" in the second clause of the above paragraph while the other words are stated with it in the first, implies that "taxes" need not be uniform throughout the United States. However, that may be, it is clear that if the subject on which it is desired to lay a tax is found in one or more states and not in the rest the tax is effective if it is applicable to the subject wherever found.

If, as above indicated, the proposed income tax may be laid on income derived from state work from which the state derives revenue, as, for example, our Hoosao Tunnel railway before it was sold, wjile operated by the state, and any state desires to institues public s rvice to protect its people against monopoly, a Congress like the present one, acting i the predatory interest, may be a destructive tax on the incomes of State employees, comple abandonment of such work there, and through the country. The evil consequences of such a power ovver the salutary action of a state can hardly be measured.

Is it

Is it not likely that this purpose, hatched by the enemies of an income tax, was so worded to prevent its aceptance by a sufficient number of state that might fear what powers over them the constitution might give, to prevent the ratification of the amendment? Even if the court should hesitate to approve a destructive tax attacking the existence or necessary government of a state, it would not be likely to claim, under the proposed amendment, the power to prevent Congress from interfereing by adferse taxation with the establishment of public utilities to pre-

If an income tax was desired the correct course was to pass one and send the question again to the supreme court. Their adverse decision five to four, one judge said to have changed his opinion over night did not deserve the same respect as the interpretation prevailing for nearly a century. It ought not to be accepted as final without a review.

The president says this course was "quite like to pass" the Senate, when a compromise was adopted (to which he agreed) to prevent this result by proposing this amendment, though he had intimated that an income tax might now pass the court. This easy going surrender to the Aldrich-Cannon dynasty was unworthy of him.

He even attacks an income tax for peace times, but thinks Congress should have the right to lay one "in times of dire need." He claimed that its large returns might endanger the tariff, and says its "most objectional feature" is "the premium it offers to perjury" of those willing to conceal their income. This is the stock argument of those who seek to exempt the intangibles of the wealthy. It is no more a function of the government to subsidize the rich by exemption to save them from going to hell through their perjuries, than it is to subsidize thieves to remove their temptation to steal. The president claims that much income will thus escape. But at least what does not can be taxed without legally releasing what does. Being at a fixed rate, his claim that the escape from the tax burdens additionally those who do reportseems untenable.

This is a resolution introduced in the New York Legislature by Senator Borah:

To the New York Legislature:—

Resolved, That the committee on the judiciary be and it is hereby directed to report to the Senate as early as may be practicable whether, in the opinion of the committee, the proposed amendment to the constitution of the United States, as submitted for ratification to the states at the special session, would, if adopted, authorize Congress to lay a tax on incomes derived from states bonds and other municipal securities, or would authorize Congress to tax the instrumentalities or meens and property of the states or the salaries of st te officers.

Now here is the answer of the other side.

Permit me to read what Gov. Fort said in a special message to the New Jersey Legislature on this subject. It is in effect an answer to Gov. Hughes' arguments against an income tax contained in his message to the New York Legislature on Jan. 5th.

" As to the claim that the federal government might injure the states as such by taxing state bonds under an income tax, there are two staisfactory answers:

"First— Congress is representative of the states and elected by the citizens and a remedy is in the hands of the people of the States.

"Second— No Congress could be elected that would lay any tax with the view of destroying the power or integrity og the States.

"I am not inclined to accept the statement that the Supreme Court of the United States might construe the words "from whatever source derived" as found in the pending amendment as justifying the taxing of the securities of any other taxing power. There is no express provision in the federal constitution at present prohibiting the Congress from imposing an income tax upon the securities of a state. Yet in the Pollock case the Court held, speaking through Chief Justice Fuller, as follows:

" 'As the States cannot tax the powers, the operations or the property of the United States, so it has been held that the United States has no power under the constitution to tax either instrumentaltieis or the property of a state. A municipal coroperation isthe representative of the

has
The Supreme Court of the United States up to this time been the sure reliance not only of the nation but of the states. The f future may be safely rested there. Inability to impose an income tax if the necessities of the Government required it would amount to a national calamity.''

In regarding taxing wealth not poverty, Gov. Fort says, ''

''An income tax is the most just and equitable tax that can be levied. It imposes the exactions of Government upon the citizen in propotion to his ability to bear them and upon a basis of the wealth, which, under the laws of the country he has been able to accumulate. 'Men should contribute to the needs of the state as God has propsered them.'

'' It evident that the burden of general taxes is not proportionately boarn by all upon whom the burden rests. The citizen of moderate holdings. real or personal, does not attempt to escape the prompt discharge of this obligation. This cannot be said of those who are essentially rich and whose holdings are large.

'' It has been said with some semblance of a c rtainty that over eighty per cent of all the vested wealth of this country is owned and controlled by 3,000 estates, corporations and individuals. The casual observer is convinced that the burden of tax-paying is borne very largely and out of all due proportion by the citizens of moderate means.

'' The United States should possess the unquestioned power to tax incomes. It may not be necessary to use the power but if emergency should arise which requires it the right to tax should exist. Congress practically unanimously adopted and submitted this proposed amendment.

Question by Chariman Farley:
''Has the State of Massachusetts now a right to tax incomes and does she exercise that right? ''

Mr. Winn: She does not tax State or Government bonds. She taxes incomes but does not tax income derived from property, and it would be questionable whether or not she could. The Supreme Court has said That tax on incomes from property is not constitutional. We never had done it, but we lay, under the excise clause of our constitution, what we call a faculty tax.

I believe in an income tax such as we had. All you have got to do is to collect it. Cut out the clause ''from whatever source derived''. (Collector against Day 11 Wallace 113). These decisions say that thepay of the militia cannot be taxed.

Question by Chairman Farly:

The question as put up to us is whether we shall accept or reject this amendment. Would you recommend that we accept it or that we reject it?
By Mr. Winn:
For the same reason that Gov. Hughes gives in his recommendation to the New York Legislature, I ask you to reject it. If you really favor an income tax, pass a resolution instructing your representatives that we are in favor of a resolution of an income tax which shall be free from these objections.

There is one further question in the matter of uniformity. This proposition does not ssy that a tax shall be imposed uniformly through the United States. This would give Congress power to lay an income tax on Massachusetts and on no other state. If the committee desires I will draw such a resolution as I have suggested.

Why should the salaries of municipality employees be exempted from taxation any more than those of other people?

By Mr. Winn:

I am not objecting to an income tax. I want a uniform system of taxation. I dont want the United States to have power to lay a destructive tax on employees. I do not object to taxing the salary of a judge.

Speech by Mr. Albert Clarke of Boston, before the committee on Federal Relations. Subject: the proposed Income Tax Amendment to the Federal Constitution.

Chairman and Gentlemen of the Committee.

I am secretary of the Home Market Clubbut do not appear for the club. I object to the pending amendment to the constitution because I think it would revolutionize our system of taxation and apportionate of public burdens b tween the United States and the States, which was agreed upon at the time the Federal Constitution was framed; and unless there had been this agreement there would have not beena federal constitution. I shall not go into the constitutional argument. I presented that matter in a speech in New Haven, and if you will honor me by reading it I will not speak now. It is the breifest statement of the arrangement between the States and the Federal Government and it must be regarded in considering the advisability of ratifying this amendment, and I submit with it two pamphlets in which there are succint abstracts of the arguments of lawyers in the Pollock case.

Speech of Albert Clarke of Boston before the Economic Club of New Haven, Jan. 7, 1910.

An income tax in the several states is one thing; a Federal income tax is another. I am not here either to favor or to oppose such a tax in the states. Neither do I oppose a Federal income tax if some emergency should make it necessary,provided t is levied inthe way already established by the constitution. What I am opposed to is the pending counstitutional amendment to authorize such a tax on a totally different plan from that upon which it is now permissible.

To understand this question it is necessary to go back to the beginning of our government and see what relations exsisted between the States and the Union and what arrangements are made for both general and local taxations.

Before the Articles of Confederation were adopted every state possessed compl te sovereignty and taxed imports from the other states as well as from foreign countries. Under the Articles the taxation of imports from each other was given up, but duties on imports from abroad constituted an important part of the revenue. of the several states. The Confederation was not authorized to collect duties or levy any other taxes and when it needed money it made requisitions upon the states. After a time these requisitions were so badly responded to that the general government had neither money or power nor credit. Without the power to raise a revenue of its own, it became almost the weakest government on earth. To gain such power was a chief reason for creating a more perfect Union.

In the Constitution there was an arrangement between the States and the Union, by which the States gave up the levy of duties upon imports, and it became one of the main resources

upon certain specified articles, such as spirits and tobacco.

And lest these two resources mightin emergencies prove insufficient, the federal government was authorized to levy a direct tax upon property.

This last method was the sole resource left to the States and naturally they did not like to have it trenched upon by the United States. And as there would probably be for a long time much more property in the old states than in the new states to be admitted from time to time, the framers of the Constitution, in order to get the concent of the States, inserted a provision that direct taxes levied by the general government, and also representation in Congress, must be apportioned to or among the several states on the basis of their population. This rested upon the doctrine which had just been settled by the Revolution that representation and taxation go together and that "taxation without representation is tyranny." It was deliberately ordained for the purpose of protecting the possessors of property from spoilation or excessive taxation by combinations. The States could raise the money in their own way and pay it into the federal treasury, or the United States could collect it directly by its own machinery.

Without this provision it w uld have been impossible to adopt the Constitution and form a responsible government. The same reasons ~~are stronger~~ for it exist today that existed then. In fact the reasons are stronger, because the country is larger and there are greater sectional inequalities. The income tax of the civil was period fell almost wholly upon the East, although the exemption of incomes was as low as $2,000. The four states of Massachusetts, New York, New Jersey and Pennsylvania paid four-fifths of it. This shows that the proposed amendment presents a temptation to the West and South to combine in Congress and fix an exemption so high that it will let out nearly all their citizens and place the burden on the North Atlantic States and a few of the older states of the Central West. It was to prevent this injustice and this danger that the framers of the Constitution with statesmenlike fore-sight, provided that if duties and excises should prove insufficient, and direct taxes upon property should become necessary, they must be apportioned among the several states according to population.

Thus we have in the Constitution three systems of taxation provided for the general government: (1) duties on imported goods, (2) diredt taxes upon property, the same as the States have, (3) internal revenue consisting mainly of excises. There are two rules under which these taxes must be levied: (1) duties and excises must be uniform throughout the United States—that is, the same on the same articles at every portand in every state; (2) direct taxes upon property must be apportioned among the several states according to their population, and the states themselves may collect and pay them over to the general government if the so choose.

It is important to bear in mind the distinction between the rule of uniformity and the rule of apportionment. There was great propriety in making dities and excises uniform, because they belonged exclusively to the general government, the States having given up all claim to them, in order that the general government might have a revenue, an of course the general government, but primarily and mainly to the several states, each with its own system of levying and collecting. Therefore when the main sources of revenue already relinquished to the general government should prove insufficient and it must draw from the principal resource of the states, it was provided that the states should pay, not according to their wealth, but according to their population and that if they should fail to pay, the general government might make the collection itself.

Several cases have been decided by the supreme court, involving the question of whether or not a federal tax on property was an excise and therefore governed by the rule of uniformity, or a direct tax and therefore governed by the rule of apportionment, and the decisions have

article, in such general use that the rule of territorial uniformity was applicable. In 1880 the court held that the income tax growing out of the civil war was an excise and did not need to be apportioned, although there had been five previous decisions that a general property tax must be apportioned, and I must say that no previous understanding of the meaning of the word excise, either in Great Brittain or this country, had broadened it to include property in general, of which incomes are a part. In the latest case, known as the Pollock case, decided in 1895 the court held than an income from property is just as much property as is the real estate or the stocks or bonds from which the incomes arises, and therefore that a tax upon it must be apportioned. This is the law of today and is good common sense, for the moment after a dividend had gone into a man's bank account it is impossible to say that interest and principal are not like property.

Now whence and wherefore this new agitation? To understand it we must give attention to a little very recent history. The demand for a federal income tax comes partly from the South and middle West, partly from our large cities, where new elements of population are not familiar with out constitution and would like more heavily to tax the rich, and partly from economists who dislike a protective tariff and think an income tax might enable the country to get along without it. So far as revenue is concerned, however, a free trade tariff, if the prople should ever get so beside themselves as to adopt one, would yiels as much as a protective tariff; in fact the British free trade tariff raises a quarter to a third more revenue per capita than the Dingley tariff raised in this country. The other demands are sectional and socialistic, and for both reasons ought to be opposed by educated men.

During the recent special session of Congress, Senator Baily of Texas, a very able and leading member of the Democratic party, moved to amend the pending tariff bill by providing for an income tax, so as to give the Supreme Court another opportunity to pass upon the question, its decision under the Wilson law having been made by only one majority, and the membership of the court having since been considerable changed.

A day was assigned for discussing the amendment and careful canvasses had convinced the Republican leaders that it would be carried by a solid Democratic vote and the votes of the most of the insurgent Republicans, who would probably be joined by a few straight Republicans. It was known that the House was as strongly inclined that way as the Senate was.

Something muse be done quickly to avert the calamity of a Republican defeat in shaping the tariff bill. The President took a hand in the matter and after conferring with the Republican leaders it was agreed that he should send to Congress a message recommending a tax upon the net earnings of corporations and the adoption of a joint resolution submitting to the several states a constitutional amendment authorizing an income tax.

The corporation tax became a part of the law and is likely to be contested as unconstitutional, because it applies only to artificial persons and not to natural persons who may be carrying on the same kind of business, and because it is not to be apportioned. Although that is not a part of the subject under consideration tonight, I digrss long enough to say that I consider the corporation tax as objectionable as a general income tax, for several reasons, (1) that it ~~would not attempt~~ — will be taken from small stockholders as well as large, which would not be attempted if the tax were upon persons; (2) that it will necessitate a uniform system of accounting, which will be difficult, if not impossible; (3) that it will federalize state institutions, w ich is now an increasing danger; (4) that it will impose double taxation, because all the States now tax corporations in some form, and (5) that it is liable to be defeated on execution, as lawyers say, by the dissolution of corporations and the transfer of their property and business to trustees and managers.

Then, after hardly any debate in either branck of Congress, although Representative Hill

was adopted, unanimously in the Senate and by a vote of 317 to 14 on the House, proposing an amendment to the Constitution which reads as follows:

"Art. XVI. The Congress shall have power to lay and collect taxes on incomes from whatever source derived, without apportionment among the several States and without regard to any census or enumeration."

From personal knowledge of the views of many of the members I am sure that the resolution would not have found such easy sailing byt for quite general belief that the amendment would not be ratified by three-fourths of the States, but it was thought best to give the States an opportunity to act upon it. It takes only twelve states to defeat it, and unless those against which it will discriminate in practive have lost their vigilence or have fallen under strange control, it is cound to be rejected.

You have not failed to notice that its language is sweeping, its terms unlimited and that if ratified it will do away with or seriously imperil the safeguards of the constitution that protect the sovereignty and the citizenship of the States. The proponents of the amendment have undertaken no less a task than to destroy that protection of property which the States reserved and secured when the Constitution was framed and which has ever since been one of the great guaranties of the stability of our government. Some of us fought to preserve the Union. It is not equally important to preserve the States? "An indivisible Union of indestructible States" should be the motto of every patriotic man.

We have fallen upon a time when there is a great deal of social unrest and numbers of good people think they must to something for reform. Let us be sure that our reforms do not enecurgas attacks upon the ownership of property. In reply to a suggestion by Mr. James C. Carter in arguing the Pollock case, that one object of the income tax was to place heavier burden upon those who are rich, and that the people will have their way, constitution or no constitution, Mr. Joseph H. Choate well said:

"Ithought that the fundamental object of all civilized government was the preservation of a right of private property. That is what Mr. Webster said at Plymouth Rock in 1820, and I suppose that all educated, civilized men believed it. According to the doctrins that have been propounded here this morning, even that great fundamental principle has been scattered to the wind. Washington and Franklin were alive to that sacred principle, and if they could have foreseen that in a short time—for what are 115 years in the life of a republic?—it would be claimed in the supreme court of the United States that, not despite that Constitution, but by means of it, they had helped creat a combination of states that could pass a law for breaking into the strong boxes of the citizens of other states, and giving out the wealth of everybody worth more than $100,000 for general distribution throughout the country, they would both have been keen to erase their signatures from an instrument that would result in such consequences."

I call attention to the fact that the proposed amendment if adopted will authorize Congress to tax incomes "from whatever source derived". Many people have incomes from United States bonds, and the securities issued byStates and their subordinate municipalities. In the Pollock case, the Supreme Court justices, though divided on other questions, were unanimously agreed in holding that income from such investments must be exempt and for the very good reason that was stated by Chief Justice Marshall in 1820 in the case of McCulloch vs. Maryland, that the power to tax is the power to destroy and it would never do to allow one part of our complex government to destory another. It may be said in view of that decision and the reason for it, no Congress would think of imposing such a tax even if authorized. But who knows? We have seen the currency of State banks taxed out of existence, for a very good reason, and we are liable to see the credit of the country destroyed in the same way for verybad reasons, in some dire emergency of internal strife.

complications should be avoided. Highly organized old States, with their numerous correctional, sanitary and charitable institutions, need the revenue more than the general government needs it and are not so likely to waste it.

The arguments and opinions in the Pollockcase shed so much light on the whole subject of the tax relations between the States and the Nation that they should be studied, and the Home Market Club had embodied them in tow pamphlets which are being mailed free to all applicants. One of the pamphlets also contains an article by Sir Guilford L. Molesworth of England showing how unpopular the British income tax has become and to what abuses it has lead.

There is a great deal of loose talk to the effect that our government is liable tp meed authority to impose an income tax in time of war, therfore it will be wise to confer the authority now. This totally ignore the provision already made. As Chief Justice Fuller well inquired in closing his learned opinion in the Pollock case,

"Cannot Congress, if the necessity exists of raising thirty forty or another number of million dollars for the support of the government in addition to the revenue from duties, imposts and excises, apportion the quota of each state upon the basis made on the census, and thus advise it of the payment which must be made, and proceed to assess that amount on all the real and personal property or the income of all persons in the state, and collect the same if the state does not in the meantime assume and pay its quota and collect the amount according to its own system and in its own way?"

This seems to me conclusive that no change of the Constitution is necessary to authorize a federal income tax whenever it becomes really desirable, and to collect it without breaking down those fundamental principles and honorable agreements upon which our system of local and general governments rests.

Gentlemen of the Economic Club of New Haven, I have long considered that Connecticut did more to uphold the hands of Washington in the prolonged and trying Revolutionary struggle than any other stats. When the Constitution was being framed and the convention seemed about to break down under the many disagreements, Connecticut again came to the front in the persons of Roger Sherman and Oliver Ellsworth and proposed the first great compromise,—a House of the people and a Senate of the States—which made all the others possible and gave us a more perfect Union without weakening a single state. It is cause for congratulation that this society of scholars and responsible business men, in the chief city of the State of those patriots and statesmen, is giving serious thought to that other great compromise—the distribution of the taxing power—and I hope that you will call the people to a renewed study of the Constitution. It is the most complete instrument of national government that ever proceeded from the wisdom of man. Events, to be sure, have caused it to be amended from time to time, but all of its amendments have been in pursuit of its purpose "to form a more perfect Union, establish justice, insure dometic tranquility, provide for the common defense, promote the general wellfare, and secure the blessings of liberty to ourselves and our posterity," and not one of them has been reversal of any one of these great purposes. I think I have shown that it would be difficult to contrive a scheme which would have within it greater possibilities of injustice and would more endanger domestic tranquility. It seems to be that the amendment is open to all the objections which there are to sectionalism, to combinations of the poor against the rich or of new States against the old, and to the socialistic demands of levelers, "from whatever source derived." There is no such new order of things or new race of beings as requires this new treatment, and there are still illimitable possibilities of success under the system which had made our country the most complete success in the history of nations.

and that an income tax is necessary in order to get at those people. There has not been such a great concentration of wealth as some people suppose, but our state laws would be perfectly sufficient to cope with the matter. Here is the wealth of the United States per capita:

1850	$307,69
1860	$513,93
1870	$779,83
1880	$850,20
1890	$1,038,57
1900	$1,164,79

If the wealth of this country was in the hands of a few, the farmers would have it. In 1870 the number of persons engaged in farming was 5,922,471; in 1880, 7,713,875; in 1890, 8,565,926; 1900, 10,438,219. The values of farms and farm property were:

1870	$8,944,857,749
1880	$12,180,501,538
1890	$16,082,267,689
1900	$20,514,001,838.

The number of wage earners and wages paid is very large, as is shown by the following:

1870	$775,584,343
1880	$947,953,795
1890	$1,891,228,321
1900	$2,322,333,877

showing an enormous incerase in the distribution of wealth among the people who work and earn it. Value of Manf. Products,

1870	$4,232,325,442
1880	$5,369,579,191
1890	$9,372,437,283
1900	$13,004,400,143

Now of course the rich can consume but a small portion of those parts. That shows the great purchasing power of our country. The same might be said in regard to our imports, as will be shown by the following table:

1870	$462,377,587
1880	$667,954,746
1890	$789,310,409
1900	$849,941,184
1908	$1,194,341,792

These imports were brought here to be used and were used.

The depositors in our savings banks are universally recognized as wage earners. Witness the following the table:

	Number	Amount
1870	1,630,846	$ 549,874,358
1880	2,335,582	819,106,973
1890	4,258,893	1,550,023,956
1900	6,107,083	2,389,719,954
1908	8,705,848	3,479,192,891

which of course is an other evidence of the large accumulation of wealth on the part of the wage earner.

Life Insurance is another evidence of the distribution of wealth as per the following table:

No. of Policies		Insuring
1870	839,226	$ 2,262,847,000
1880	679,690	1,564,182,592
1890	1,319,561	3,629,057,439
1900	3,176,051	7,033,152,380
1907	5,945,780	11,486,518,261

Question by committee.
Do you think there is any need for this tax? No.
Answer by Mr. Clarke, No, it is provided for in case of war.
Q. by committee.
You state that wealth is well distributed. Do you mean over the whole country?
Ans. by Mr. Clarke.
Well, there is much more money in the manufacturing states because they are older. I dont believe a state should be taxed out of existence.
Q. by committee.
Did the government tax the states out of existence?during the Civil War?
A. by Mr. Clarke.
No, but there was much objection to it because it crippled the federal government
Q. by committee.
Do you believe that the passage of this amendment would illiminate the tariff on the necessities of life?
A. by Mr. Clarke.
No, this is not a tariff tax. Great Britain is a free trade country. She rasis more customs than our tariff raises. She has an income tax, which has been increasing continously to meet new national demands, which are unwise. The closer you keep the tax at home the better the states will feel, and the people will be better off. I fought to preserve the Union and now I ask you to preserve the states. England puts a tariff on goods the like of which are not produed in that country; and we do the reverse. If their revenue need rquires it they put on an excess duty.
Q. by Comm.
Is not our tariff for revenue only?
A. by Mr. Clarke.
It is supposed to be. The framers of the Constitution declare in preamble that it was to protect manufacturers and raise revenues.

Q. by Comm.
Was not it supposed that the national government had a right to asses an income tax up to the time when it was declared unconstitutional?
A. by Mr. Clarke.
Yes. Congress thought it had a right, but they didnt look into the matter far enough.
Q. by Comm.
It being the case that the government has assumed it had that right we would make a change.
A. by Mr. Clarke.
Yes we would in providing a different way of raising revenue. If we adhere to the constitution wewould leave it to the state. Chief Justice Fuller made that clear in his opinion in the Pollock case.

would place nearly all the burden of taxation on the East and the Middle West. The income tax of the Civil War fell on the four states; Massachusetts, New York, New Jersey, Pennsylvania. That is,more than four-fifths of it.

Q. by Comm.
Has not a great deal of the wealth gone west?
A. by Mr. Clarke.
Yes but it would be easy for those states to effect a combine and have Congress exempt them.

We must have strong state government, in order to provide for unsupport our public charities, such as hospitals, insane asylums public play grounds etc. We need the income much more than the federal government.

Speech of Mr. John C. Cobb, Vice Pres. Chambers of Commerce before the Committee on Federal Relations: Subject— the proposed Income Tax Amendment.

Chairman and Gentlemen of the Comm.

"There seems to be grave danger that the proposed amendment to the Federal Constitution authorizing the imposition of an income tax by the Federal Government will be illogically adopted on the broad theoretical and patriotic arguments that an income tax is economically sound and that the government should have very wide powers in case of war to raise money for the preservation of the nation.

An analysis of the question will, I think, clearly show that neither of these arguments can be properly be applied to the case as it now stands. There is absolutely nothing in the proposed amendment which indicates that it is a provision for war or emergency, and in fact it is so worded that its acceptance would practically amount to a declaration that the country expected Congress to improve a federal income tax as a part of the normal system of taxation.

On the other point, I think most men who have studied questions of taxation agree that an income tax is economically sound and may well be considered in the framing of tax laws. In fact in answer to the question do you believe in an income tax I myself should say yes,. In the framing of our state law I believe that certain classes of property can most equitably pay their share through an income tax. But in answer to the question "do you believe in an federal income tax" I should say unequivocally no. I do not believe in the Federal Government entering the field of direct taxation which has heretofore been consistently an logically left for state and local revenue.

The principal involved here is fundamental, and the division which has given to the national government the field of indirect taxation—the tariff and internal revenue— and left direct taxation to the states is a sound and logical division, clearly defined and easily understood. If the national government imposes direct taxes, each state in framing its laws must consider the federal tax, and the ability to bear state taxation is of necessity curtailed. To ajust this equitably would be most difficult and the injustice and redup.ication of burdens likely to arise from the imposition of the same form of taxes by two powers acting independently is one of the most serious objections to a federal income tax.

Ina consideration of this question we should not too much weight to the argument that Congress have acted favorably on the amendment as the needs of the national governm-nt are very

us to accept or reject their action, and to discern whether or not we want to give money we have been in the habit of spending at home for our roads and our police force to be spent by the national government on the Panama canal and a larger navy. We believe in a Panama canal and are proud of the name but they seem to be making a pretty good showing on both with the means now at their command,and we very much need at home good roads and police protection, not to mention the fact that our schools are over crowded.

I therefore contend that until a much greaterneed for funds is proven by the national government, and until the country had advisedly passed un the question of a substitution of direct for indirect federal taxation, we should oppose any amendment to the federal constitution empowering direct taxation.

In closing I want to add a word more in answer to the argument which has been most generally and effectively used in favor of the federal income tax that it is a power that would be much needed in time of war. Every patriotic citizen desires that our government should have every necessary power in case of emergency, and if Congress will frame an amendment to the Constitution clearly defineing that federal revenue shall be derived from indirect taxes, with the provisal that in case of war or national calamity an income tax, or any or every other form of direct taxation may be imposed, I think that Mass. will gladly ratify it. But the patriotic argument as applied to this amendment, worded and put forward as it is does not fit.

Speech of H.B. Curtiss,Pres. of the Old Boston Nat. Bank, before the Committee on Federal Relation. Subject: The proposed Income Tax Amendment.

Chairman and Gentlemen of the Committee:

"I am strongly opposed to the passage of this income tax amendment. The framers of the Constitution considered it quite unfit that those who could not pay a tax should impose a tax on those who could pay, and this idea is a odious today as it was then. Those who advocate this tax today are the very ones who cant pay it. I do not believe in passing this as an imergency measure because I am afraid it would go ahead of the emergency, like the man who kept the bottle of brandy for emergency, but always used it before the emergency came. It is argued that the tax would be but a little one, but it is probable that the seed thus planted would be on fertile soil. Our incomes are already used up in the large cost of living caused by the tariff. If this amendment is adopted the government will be invading the territory of taxation which belongs to the state.

I am sponsor for a taxation measure which would enable Mass. to levy the income tax which would be collected and accomplish locally all that could be properly done under the federal act.

Q. by Mr. Brown.

"How do you think this income tax would affect the tariff?"

A. by Mr. Curtiss."

"I dont think anything will effect the tariff."

Q. by Mr. Brown.

"You think it will always remain for the protection of American industries."

A. by Mr. Curtiss.

"I would not say that, but I think the tariff is fixed on us, and will stay. They have tried to reduce it, but have generally failed."

In regard to the statement that this taxation is only to be imposed in case of emergency I would say that Gladstone proposed that the income tax in England was going to be used only in case of emergency. He proposed it should be deminished each year, but there is always an emergency. The emergency will come too often, and if it a one per cent tax one year it

The high cost of living is almost entirely dueto our high tariff tax. I think the tariff is honest and cannot be disposed of. On every barrel of sugar that we import $6 goes into the U.S. Treasury.

Q. by Comm.
"There is no tax on corporation bonds, is there?"
A. by Mr. Curtiss.
"I know a great many corporation bonds that are paying taxes. A corporation find it to its advantage to issue bonds at 4% and buy up territory and erect buildings and procure property. You cannot issue bonds of wind.
Q. by Comm.
"Does the corporation that issues bonds pay any tax on the incomes?"
A. by Mr. Curtiss.
"The bond holder pays a tax on the income according to the bill I am interested in. In order to induce people to make returns on their incomes we should come back on them with our income tax. Our tax will mean that people will have to pay a tax on the very matter you speak of. The government has no right to come in next year and the tax may be doubled.

Q. by Comm.
"Could the government properly tax government bonds?"
A. by Mr. Curtiss.
"Only in case they were issued with that understanding."
"Q. by Comm.
"Are any issued that way?"
A. by Mr. Curtiss.
"Yes, but those bonds are not taxed ordinarally. If you have a 4% bond and tax that bond 4% you destroy the bond. The whole trouble about this matter is, the inequality of taxation.

Speech by Nathan Matthews of Boston, Mass. before the Committee on Federal Relations. Subject The Proposed Income Tax Amendment.

Chairman and Gentlemen of the Committee:

I ahve no prepared remarks but will call your attention to some features of the subject thst have not been discussed: The economic and political. Take the economical objection. First I will call attention to some of the things that this amendment would not do. It is not true that the effect will be to tax some things that are not taxed now. Some one said this will be used to tax intangible personal assets. That is not so. The amendment is not restricted to that kind of property. It is suggested that it would be a good thing to tax interstate commerce, but this amendment is not confined to things that are not taxed now. Professional incomes have been referred to as not being taxed in some of the states, but this amendment is not confined to profits of that kind. There are no limitations and the argument that it will be used to tax things that are not now taxed loses sight of its intended effects and the entire history of legislation. There is no limitation on the power of Congress to these things that might be justified if the tax was confined to them. It will be used to tax personal and ordinary property. That it its intended effect. That will be taxed first and taxed alone. It would be foolish to say that is the only kind of tax.

Although President Taft has endorsed this measure the main advocates come from the South and West, the advocates of the income tax had directed their arguments principally to the necessity for a tax upon intangible property. The specific amendment now before the Legislature goes

ly tax first the property which is most easily reched, and this will of course be the land, and the basis of the tax will be the amount that the land can earn, rather than what it does earn.

It may be true, as President Taft says, that Ohio can pay this added tax, but it does not hold true of Massachusetts, because this state is already raising twice as much by local taxation as its competitors; the local rate of taxation being 103% greater than in Connecticut, New Jersey, Pennsylvania, and Illinois; and to say that such a tax can be borne in Mass. because it can in these states is folly. In my opinion this bill would simply double up the tax on certain classes of property, and would result in amending the constitution with respect to all taxation, practically abolishing the constitution as it relates to taxation. I would not oppose an income tax amendment that affected only intangible property, but in its present broad form I am unalterably opposed to this amendment.

By Committee: What is the income tax?

Mr. Mathews: Well, it might be defined differently.

By Committee: Why Where do you get at his income? He might have bonds and stocks and real estate ETC. Would it be on the final summing up of his total income?

Mr. Mathews: This amendment would let Congress tax any or all kinds of assets.

By Committee: If a man had a losing business in one thing and was making in another thing would any deduction be made?

Mr. Mathews: No deduction will be made. It will open the door to a great many abuses of the taxing power

Another great objection to the proposed amendment is that the money would be spent on purposes remote from Massachusetts. The question is, should we be taxed twice as much as we are now. I think we can not stand any more taxation.

By Committee: From what Taft said, Congress has no power to tax bonds, and he would like to give Congress that power.

Mr. Mathews: Why didn't he draw the amendment so it would cover only that? If this amendment had said Congress shall have power to levy direct taxes upon the interest on bond, or on dividends, or on corporation stocks, it could have been used for that purpose; but it is not so restricted and will not be used for those purposes, but will be used on Massachusetts real estate. This amendment was drawn in haste, and covers everything; but its framers did not sit down and say just what they wanted taxed.

By Committee: If this tax was levied, take a poor man who owns a little home, mortgaged for two thirds of what it is worth, would he be taxed?

Mr. Mathews: Yes I have no doubt the real estate would be taxed.

By Committee: Is not tqo thirds of the property in Massachusetts mortgaged?

Mr. Mathews: I should say so and this tax would get at the man who is rich. My objection to the proposed amendment is that there would be no restriction on the power oof Congress. If this amendment is adopted Congress will have power to levy an income tax on anything

I should like to go on to the political objections. The first that has attracted the most attention is, the language is too broad. It seems to me that that ground should be relied upon as the sole objection. Taxation should follow representation. It was not intended to give Congress power to tax property directly except in proportion to the representation in Congress. It was for that principle that the Revolutionary War was fought, and now you propose to abolish it. As the proposition now stands, there would be nothing to prevent Congress from levying a progressive tax.

Another objection is this: that it would abolish the states and the basis of the Federal government would be changed. The last vestige of states rights is the only one left, and that power is reserved to the states by the Federal government. You might as well give up the rest of the states rights. You might as well give up the whole constitution. If any part of the United States is the state, it should be the most important.

Some one has said that our representatives in Congress favor this amendment. I think it was passed for the sake of getting the tariff measure through as a matter of politics, and those from Massachusetts have failed to realize that its effect would be most onerous here. I should like to contrast the opinions of those who are for it now with that of those who framed the constitution. The framers of the constitution were men of large affairs, they were statesmen and knew the dangers of the future. They were wise to an extent that has been the wonder of all nations since. The people who created this state were with the framers of the constitution to the extent that they wanted to reserve the right to tax their property.

By Committee: What is an indirect tax?

Mr. Mathews: It is a tax on consumption. The government has the widest power to levy taxes on the basis of a census It is one of the easiest taxes that can be paid.

By Committee: Doesn't that fall on a few people?

Mr. Mathews: No, but it is a small tax. By taxing transfers of stocks certificates Congress could raise a great deal of revenue.

Chairman: Regarding Governor Hughes method in the Wilson Bill Federal bonds were not taxed and state bonds were. That was declared unconstitutional; but why did they not tax Federal bonds.

Mr. Mathews: Because the government did not want to reduce the value of its bonds.

Mr. Tuck: How do you account for Governor Forts message endorsing the amendment.

Mr. Mathews: On the ground that men differ he had the idea that this is restricted. That is a wide spread opinion In the South and West they believe that they could benefit by the taxing of the wealthy states.

By Committee: Under this amendment, if you spent your money on the outside would the tax be on the net amount of your income?

Mr. Mathews: Yes.

By Committee: You admit that Congress could frame a tax law which would reach the wealthy?

believe in this broad form of an income tax.

I would not be opposed to an income tax properly distributed, but there are no barriers around this power. Every state has surrounded the power of a federal tax with strong barriers, and if you abolish these barriers you might as well abolish the whole constitution.

By Committee: Would not a state have a right to grant the federal government certain powers?

Mr. Mathews: Yes, the fourteenth amendment is the only restriction.

Speech of Mr. George L. Barnes, Boston, Mass. before the Committee on Federal relations. Subject the proposed income tax amendment.

I wish to off er for the consideration of the committee the resolution against the amendment adopted by the Boston Chamber of Commerce, at a meeting of its members Jan. 25. The resolution was adopted by an overwhelming vote with between four hundred and fifty and five hundred members present.

Resolution adopted by the Boston chamber of commerce at the meeting of the members held Jan 25, 1910:
Resolved, That in the opinion of the Boston chamber of commerce the assessment of a national income tax is an encroachment upon the powers of taxation which should be reserved for state and local revenur, and that the giving of such power to the national government should be limited in such manner that it can onlybe exercised in time of war or emergency

I would like to answer the question that has been brought up here about the power to amend the constitutional amendment. I would say that congress has a right to do so. The chances are there would be no risk for congress to drop this amendment, as there will not be a war within the next two or three years. The adoption of this amendment would be a great departure from the idea that the framers of our constitution had that taxes for support of the federal government should be raised by tariff and internal revenur

Congress made this proposition at the end of a hot debate on the tariff bill. Now, does the government wish to depart from the old system and adopt a system of direct taxation I believe in a protective tariff, and that all the revenue that is needed can be raised through our tariff; and present conditions do not necessitate our looking for other revenue, and I do not believe the government should resort to direct taxation. This is a clear and distinct departure without proper consideration If he had been asked at the time of the campaign the people would have had time to vote upon it and the matter would now be different.

There is another argument. We have to some extent an income tax, and it is one of the first principles of taxation. To have two separate powers taxing incomes would bring a chaotic condition of affairs. I am not opposed to an income tax, because it is a good mode of ta xation, and for certain purposes it is the best. In the adjustment of taxation I think a certain kind of income tax is not wrong. I am opposed to the federal income tax by this amendment. As chief justice Marshall said, "The power to tax is the power to destroy." The national government here could assume the power of contr olling the states and tax them out of their vitality, and destroy the Union of separate republican states. The independence and sovereignty of the state is more directly attacked here than ever before; and I think the importance of that is so great that it should only be done when we have decided to give up a union of states and ad opt the idea of a central government.

Mr. Barnes: No we have over 3700 members, some of whom are bankers, lawyers, merchants, and of every branch of trade. We have mos t of the large manufacturers in this and others parts of New England. It is a broad and general organization. I don't know what the politics is of other members of the board of directors.

Question by the Committee: Please tell the Committee by how much majority the vote was that sent you here.

Mr. Barnes: It was practically unanimous. A vote was made to reconsider the matter, but it was not seconded.

Question by the Committee: You referred to the fact that the question of an income tax had not been debated. Don'tt you know it was in the plank of one of our great national parties

Mr. Barnes: Yes but it was not debated in the way it should have been debated.

Question by Committee: Have you seen Governor Fort's opinion?

Mr. Barnes: Yes, it is the same old story. He did not bring in any thing new.

Question by Committee: Do you consider that it was assumed that the government had the right to impose this tax?

Mr. Barnes: It has been used twice in the history of this government. The question was not settled. This is an overt act, which changes the constitution, and makes it a part of the form and system of government, whereas the others were emergency acts, which were not opposed or considered. Having that power in case of emergency, we think, should be carefully considered

Question by Committee: The strong argument in favor of this amendment is, that the rich are not be ring their part of the burden of taxation.

Mr. Barnes: I think that is an argument that has a basis in certain features. Our income tax is unsound and subject to that criticism, but this is not the place to correct it. If it is brought up as a question of a state income tax, I would say that I believe in the levying of an income tax, as certain property can best be reached in that way, but in our state law I should not place income tax on incomes derived from real estate and shares of our public service corporations, but certain classes of property can best pay their proper share thorugh an income tax. However, that does not apply. The question is, shall the government have the right to take from us taxes that were fromerly used o our roads, for the support of our schools and public charities, and spend it in constructing war ships and the Panama Canal.

Question by Committee: What is your idea as to the present tax on bonds?

Mr. Barnes: I believe that a great many of these bonds pay taxes and others do not. Our laws are weak on that point, and some bonds escape taxation.

Question by Committee: Do you think this amendment should prevail in case of war and stress?

Mr. Barnes: In answering that question I cannot speak for the chamber of commerce. We believe that congress should have power to preserve the union.

Question by Committee: Has not the government sufficient power now?

tion a new idea and a very dangerous one.

Question by Committee: Why do you say tax them out of existence?

Mr. Barnes: I take the words from Justice Drewer and Chief Justice Marshall. Under this amendment a tax could be framed that would take the whole of it out of New England.

Question by Committee: Do you mean that they would tax certain people?

Mr. Barnes: Yes suppose the farming states would get together and say that they would exempt the farmers.

Question by Committee: Doesn't the East derive its wealth from the whole country?

Mr. Barnes: Yes, but the tax would be proportionate I believe if the Lord will give us a chance to revise our State laws, and if such a revision is made, an income tax will form a large part of it, because the income tax is fair

Debates on the Sixteenth Amendment

Note: the preceding includes errata as in the original.